Supreme Court, U.S.
FILED

09-441 OCT 9 - 2009

OFFICE OF THE CLERK

No. _____

In The
UNITED STATES SUPREME COURT

_____ ◆ _____

Vincent Ventimiglia, et al.,

Petitioners,

vs.

St. Louis C.O.G., Inc., et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MISSOURI SUPREME COURT, AND THE MISSOURI COURT OF APPEALS EASTERN DISTRICT

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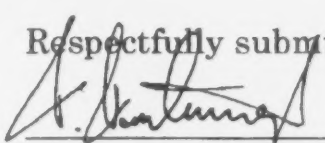
I, VINCENT VENTIMIGLIA, declare under 28 U.S.C. 1746 that he has read the attached appendices and the same are true and correct, and has not been changed in any manor, whatsoever.
DATED: 9/28/2009

Respectfully submitted,



Vincent Ventimiglia

IN THE SUPREME COURT OF MISSOURI
SC90165
ED91597 May Session 09

Vincent Ventimiglia, DebbieVentimiglia,
N.V, and J.V., a minor,
Appellants,

Vs. (transfer)

St. Louis C.O.G,Inc., d/b/a Twin Rivers
Worship Center, T. Bryan Cutshall,
Norman McFall, Terry Jones, and
Aaron Buck,
Respondents.

Now at this day, on consideration of the appellant' application to transfer the above entitled cause from the Missouri Court of Appeals, Eastern District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI -Sct.

I, Thomas f. Simon, Clerk of the Supreme Court of the State of Missouri , certify that the foregoing is a full and complete transcript of the judgment of said Supreme Court, entered of record at the May Session, 2009, and on the 30th day of June, 2009, in the above-entitled case.

Given under my hand and seal of said Court, at the City of Jefferson, this 30th day of June, 2009.

/s/ Thomas Simon, Clerk **APPENDIX #1**

IN THE SUPREME COURT OF MISSOURI

VINCENT VENTIMIGLIA,	)
DEBBIE VENTIMIGLIA,	)
N.V., and J.V., minors,	) Circuit
	) Court No.
Plaintiffs/Appellants,	) C08SLC0
	) 0790
	) Court of
	) Appls. No.
	) ED91597
vs.	) Supreme
	) Court No.
	) SC90165
ST. LOUIS, C.O.G., INC., d/b/a,	) Court of
TWIN RIVERS WORSHIP	) Appeals,
CENTER,	) E D
T. BRYAN CUTSHALL,	)
TERRY JONES,	) 21ST
NORMAN MCFALL,	) Judicial
AARON BUCK,	) Circuit Ct.
	) of St. Louis
Defendants/Respondents.	) County,
	) Division 5

APPLICATION FOR TRANSFER

APPENDIX #2

Transfer sought prior to opinion ___Transfer sought after opinion X

Record on appeal filed:
10/15/2008
Opinion of Court of Appeals filed:
3/24/2009
Motion for Rehearing filed in Court of Appeals:
3/30/2009
And ruled upon: 5/7/2009
Application for transfer filed in Court of Appeals: 3/30/2009
And ruled upon: 5/7/2009

Parties Seeking Transfer Attorneys

Vincent, and Debbie	X
Vincent, and Debbie	
Ventimiglia, pro se, with,	X
Ventimiglia, pro se, with,	
N.V., and, J.V . Minors	X
N.V., and, J.V. Minors,	
Plaintiffs/Appellants,	
5817 Runnymede Place	
Imperial, MO. 63052	

Parties, Attorneys

St. Louis C.O.G., Inc., d/b/a
Daniel Tobben, Kevin Behrnt
Twin Rivers Worship Center,
Dana McKitrick Law firm,
T. Bryan Cutshall, Terry Jones,
150 N. Meramec
Norman McFall, Aaron Buck,
Suite 450

Clayton, Mo. 63105;
Defendants/Respondents.

J. Adamek Moore, K. Goleaner
Brown and James Law firm
1010 Market St.
20th floor
St. Louis, MO. 63102

APPLICATION FOR TRANSFER

Questions Presented;

This case presents the following questions general interest, and importance:

1. Did the Eastern District Court of Appeals, error, by applying a different standard, in conflict with Mo.S.Ct. Rules, and Mo. Statutory Laws, and the Mo. Bill of Rights, when it *mischaracterized* the procedural aspect of appellant's case, and the Ct. of Appeals denied appellant's appeal under those standards, knowing the Circuit Court dismissed defendant's case wrongly, and in complete violation of Missouri Supreme Court Rule 55.33(a)(b)(c)(d), as well as, R.S.MO. 509.260, 509.490, 509.500, as well as, Article I, Section 14, of the Missouri Bill of Rights, wherein, all of these appellees, herein, were procedurally barred, when these appellees, herein, failed to file a timely responsive, or reply pleading, following the granting leave, by Judge Kintz, Div. 5, and filing of, Appellant's First Amended Complaint, when appellees

had plenty of time, but defaulted with their eyes open? *State v. Teer*, 275 S.W. 3d 258 (Mo.Banc, 2009); *Automotive Leasing Corp., v. Westhold,* 945 S.W. 2d 600, 602, (Mo.App.E.D.); *Wells v. Nulton,* 898 S.W. 2d 653, 654(Mo.App.W.D.); *Pure Country v. Sigma Chi Fraternity,* 12 F.3d 952, 956 (CA 8 2002); *Hemphill v. Roy,* 2008 Lexis 758, at [#2], at 13(E.D.Mo.2008), 2008 W.L. 68735(E.D.Mo.); *Dwyer*, 2007 U.S. Dist. Lexis 11685, at [#4],(E.D. Mo.); *Medeiros v. Cornwall,* 911 A.2d 251, 254 (S.Ct. R.I. 2006). Do not, these standards used against appellants, herein, require review by this Court; and, is it not true, these Rules, and Statutes, "*shall*" be enforced?

2. Did the Ct. of Appeals, E.D., error when the Eastern District Court of Appeals for the Eastern Division, and the Circuit Court mischaracterized the true procedural dilemma, the appellees were in, wherein, when the appellees failed to file a response to the amended petition that did moot the pending, Motions to Dismiss Appellant's Original Complaint, by mandate of Supreme Court Rule 55.33(a)(b)(c) (d), and R.S.Mo. 509.260, 509.490, 509.500, rendering the appellees, herein, in "*legal default*" and appellants did not expressly, or otherwise, agree to this procedure, and appellants should have been awarded judgment by the very fact the amended complaint was never contested, or denied. *Auto Leasing Corp. v. Westerhold,* 945 S.W. 2d 600 (Mo.App. E. D. 1997). "Recasting, or recharacterizing a pro se litigants petition without proper notice, and simply to deny relief, violates fundamental fairness." *Castro v. U.S.*, supra, at 540 U.S., at 384; 124 S.Ct. at 788-789 (2003). "Dismissing such case in this posture, was error," *Wright v. M.D.C.,* 48 S.W. 3d 662

(Mo.App.W.D.); *Wright v. M.D.C.* 87 S.W. 3d 396 (Mo.App W.D. 2002).

3. Did the Eastern District Court of Appeals error, when it created double standards for pr se litigants, and impose that double standard against appellants, and subjected appellants to heightened standards, whereas appellees were clearly, in default, and were clearly, procedurally barred, when appellees violated the mandates and, " *shall* " of the Missouri State Supreme Court, Rule 55.33(a)," a party *shall* plead in response to an amended pleading...," and R.S.Mo. 509.490, " A party *shall* plead in response to an amended pleading...." If these rules were violated by a pro se litigant, these rules and laws would be enforced. See; *Mullen v. Renner*, 685 S.W. 2d 212 (Mo.App.W.D. 1984); *Automotive Corp. v. Westerhold,* 945 S.W. 2d 600, 602 (Mo. App., E.D.); *First Bank of St. Charles v. Am. Family Mutual Ins. Co.* 277 S.W. 3d 749 (Mo. App.E.D. 2008); *Schooly v. Kennedy,* 712 F2d 372 (CA8). Does this standard set by the Ct. of Appeals, E.D., including, *not granting appellants' , viable, first amended complaint*, violating Rule 55.33(a), raise conflicts of laws, doubt, and cast a cloud of unfairness that deserves to be heard by this Court? And, the Circuit Court also, held appellants to heightened standards by not giving facts findings, and conclusions of laws, but rather allowed the attorneys to write the naked, orders, and judgments, with the judge's signature.

4. Did the Eastern District Court of Appeals, error, by not addressing the fraud of appellees, and their attorneys, when it opinioned in this case, after it was, undisputedly confronted by appellees who were openly perpetrating a fraud on the Missouri

Court of Appeals, E.D., the Federal District Court, Eastern District of Missouri, the U.S. Court of Appeals for the 8th Circuit, in the State of Missouri, the United States, by, where the appellees were " *blowing, hot, and cold,*" and " *fast and loose,*" using diametrically opposed positions in each Court, with the intentions to delay, frustrate, and confuse the due administration of justice, in this underlying, case. " Parties commit fraud on a court when they move from court to court, using diametrically opposed factual, and legal premises." Citing; *4 Connecticut Ins. Law Journal* 589 (1997-1998), P.p. 1-120; Also, see; *Hazel Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, 64 S.Ct. 997 (1944); *Sutter v. Easterly,* 354 MO 282, 189 S.W. 2d 284 (Mo.); " *Fast and Loose* " *State v. Lofton,* 528 N.W. 2d 90 (Wis. Ct.App), citing, *State v. Grove,* 437 N.W.2d, 218, 221 (1989); *Krause v. Aetna Life and Cas. Co. 1994* Conn. Super. Lexis 2136 at [#2-3] (1994); *State v. Bankhead,* 18 S.W. 3d 253 (Mo.App.E.D.); *Smith v. Groose,* 205 F3d 1045 (CA 8), cert. den. 121 S.Ct. 44.

5. Did the Eastern District Court of Appeals, error when it refused to report the opinion over the objections of appellants, to hide the obstruction of justice, and fraud, of appellees, and their attorneys, inwhere the appellees used diametrically opposed positions in the federal court and the state courts. In addition, the Mo. Ct. of Appeals, used those false facts and theories to deny relief to appellants and the Ct. of Appeals used false summary of facts cited on page #3 of it's opinion and was totally inaccurate and did not represent the true procedures followed in the case. These procedural misstatements of the Ct. of Appeals, wrongfully removed the procedural

default the appellees were in when appellees failed to file a timely response to the amended petition in violation of S.Ct. Rule 55.33(a), and R.S.Mo. 509.490, and, *T. Bryan Cutshall, Aaron Buck, and Norman McFall, failed to even file an appeal, and it was argued, but denied.* The Ct. of Appeals was advocating for the appellees and against appellants, in clear violation of, *Lynch v. Mo. Dept. of Cor.*, Mo App. Lexis 1434, at p. #5, ED 2008. " The court cannot advocate." Is not this, recharacterization of appellants case?

FACTS

The Ventimiglias filed a timely civil action in the circuit court for the County of St. Louis, raising multiple claims; (1) Malicious Prosecution; (2) Negligent Infliction of Emotional Distress; (3) Intentional Infliction of Emotional Distress, and (4) Declaratory Judgment, and other causes of action, of obstructing access to the Missouri Courts.

Appellants procedural facts are that; (1) an amended complaint was granted and file on May 9, 2008, and appellees were all, duly served; (2) The Ct. of Appeals, E.D., wrongly found that appellees were not served with the amended complaint. (p.#3, slip opinion-memorandum, entered on March 24, 2009). Appellants vehemently denied the false allegations, continuously.

As a matter of law, there is a presumption that the circuit court and the court of appeals did not follow, and that presumption is--" *when a certification of mailing is made, in the file*," the presumption is, " *it was received." Kuchar v. A.T.&T, Pension Benefit Plan M. ...40 Employee Benefits* (AS 2007 U.S. District Lexis 18141 (N.D Ill.

2007). The amended petition was filed, May 9, 2008. The Ct. of Appeals made a serious misstatement, as follows; " On May 9, 2008, without notice to the other parties, appellant filed and presented to Judge John F. Kintz a Motion for Leave to file a First Amended Petition, which was granted." (Opinion, page #3, 3/24/2009) Missouri Court of Appeals had no true basic facts to support the above statement, as the May 9, 2008, pleadings of appellants, had a certification of mailing to each appellee. Evidently, the Ct. of Appeals did not read appellants' file.

More than 28 days had expired, from the June 11, 2008 hearing and the July 10, 2008 rehearing date, in which the appellees were notified and given the chance to correct the deficiencies in their pleadings.

On July 10, 2008, judge Kintz dismissed appellants' case for failure to state a claim. (opinion page #3) BUT, that dismissal was based, and had to include the *" mooted motions to dismiss."* Appellant, Mr. Ventimiglia, and his family, raised simple claims;

A: Appellees egregiously attacked Mr. Ventimiglia, and has minor children in the middle of a church service because the pastor could not control himself, and went totally out of control;

B: Appellees caused a bogus restraining order to be filed against Mr. Ventimiglia in fear of retaliation from Mr. Ventimiglia, and to keep Mr. Ventimiglia away from the attackers, which was found to be, filled with false evidence, and perjury, including, fraudulent behavior;

C: Appellant, Mr. Ventimiglia, tried reasonably, to confer with Atty, Jones, and appellees, Norman McFall, and T. Bryan Cutshall, about the crimes

they were committing against the state and federal gov., trying to resolve the issues. Instead, the battle continued in the circuit court, Div.18, until just before the trial date, and after two discoveries, wherein the appellees clearly showed they had no case and were forced to abandon their case, by a voluntary dismissal and withdrawal of their bogus case against Mr. Ventimiglia. In where, judge Bresnahan, Div. 18, granted partial declaratory judgment, in favor of Mr. Ventimiglia, awarding Mr. Ventimiglia money, and recommended malicious prosecution as a remedy for Mr. Ventimiglia. And appellants cannot receive redress in the courts.

REASONS FOR GRANTING THE TRANSFER

From these facts, the Eastern District Court of Appeals made serious procedural errors. One serious error was to bogusly say, " an amended complaint was filed without notice to the appellees." Opinion p.#3.

This changed the entire landscape of the entire case, and made appellants amended petition, look frivolous, when in fact, the Ct. of Appeals advocated for, and opened a locked, door for the appellees to escape from their default, through, by not filing an amended motion to dismiss, or answer, when appellants filed their amended petition. Mo.S.Ct. Rule 53.33(a), and R.S.Mo. 509.490.

The record in this case conclusively shows that a timely Motion Requesting Leave to Amend, and an amended Petition was granted, and filed in this case, on May 9, 2008, and appellees were duly served notice, and the amended petitions. The Ct. of

Appeals, E.D. had nothing in the record to substantiate that appellees were not given notice, (opinion p.3), and the legal file contains the amended complaint, with the request, that was filed on May 9, 2009, and it was certified with a proper certificate of service, stating that copies were mailed to appellees.(L.F.pp. 206-234, 252-259) . The law presumes mail was delivered -- this presumption exists in this case. See; *Kuchar supra.* 2007 U.S. Dist. Lexis 18141 (N.D.Ill. 2007).

Generally speaking, a motion to dismiss is void when an amended complaint is filed. *Missouri Supreme Ct. Rule* 55.33(a); *R.S.Mo.* 509.490; " Use of " *shall* " contained therein is mandatory." *State v. Teer*, 275 S.W3d 258 Mo.Banc. 2009); " The motion to dismiss is ' *moot.*'" *Wells v. Nulton, supra.*; *Pure Country, supra.*; *Hemphill v. Roy, supra.*; *Dwyer, supra.*; *Medeiros, supra.*; Thus, the Circuit Court had no authority to dismiss, consequently, this stripped the circuit court of jurisdiction, as well, to dismiss, in such circumstances, as using such mooted motions to dismiss, appellants case. (Opinion p.#3).

When the amended petition was filed and not contested, judgment should have been awarded to appellants, in accordance to Missouri law; *Auto Leasing Corp., supra.*; *Wright v. M.D.C.*, 48 S.W.3d 662 (Mo.App. W.D.) Opinion after remand, *Wright v. M.D.C.* 87 S.W. 3d 396 (Mo.App. W.D. 2002).

What is most important, both, the circuit court, and the Mo. Eastern District of the Ct. of Appeals, mischaracterized, and recasted appellants' case without due process, or proper notice. See; *Castro v. U.S.* 124 S.Ct. 786, 788, 789 (2003). As a matter of fact, the Ct. of Appeals misstated facts,

and procedure, by making it appear that appellants did not serve the amended petition on appellees. (opinion p.#3). The Ct. of Appeals created double standards because, had it of been appellants who failed to file a timely reply from the amended petition, the Court of Appeals would have held appellants in default. See; *Mullen v. Renner, supra.; Automotive Corp., supra.; First Bank of St. Charles, supra.*. In addition, the Ct. of Appeals, then inferred the trial Court was acting, " *sua sponte* " to dismiss the amended petition of appellants. (opinion p.#5-6) This is not correct, and the Ct. of Appeals, damaged appellants' appeal, and denied it.

Appellees would argue to the federal court, that the state courts had the proper jurisdiction and the federal courts could not hear the case. And the federal court dismissed for lack of jurisdiction;

Appellees would then argue in the state court that the federal court dismissed for failing to state a claim upon which relief could be granted, thereby barring relief in the state courts.

Appellants ask this Court to take judicial notice of the Ventimiglia cases;

A: 2009 U.S. District Lexis 90 (EDMo. 2009);

B: 2008 U.S. District Lexis 99591 (EDMo. 2008);

A federal appeal is pending, Appellate Appeal No. 09-1222 (CA8).

The arguments given in the federal court was diametrically opposed to ones made in the state court. This is a fraud on the courts, and the Ventimiglia family. See; *4 Conn. Ins. L.J.* 589 (1947). And all cases cited, in question #4, above.

In the Ct. of Appeals opinion, on page 11, the

court misstates the pro se rules regarding pro se litigants. The court is clearly wrong with it's version of jurisprudence on pro se litigants, and in direct conflict with; *Haines v. Kerner,* 92 S.Ct. 594 (1972); *Herron v. Wyrick*, 686 S.W.2d 56 (Mo.App. W.D.); *State ex rel. Coats v. Lewis*, 689 S.W. 2d 800 (Mo.App. W.D.); *Denton v. Hernandez*, 112 S.Ct. 1728(1991); *Bishop v. Cole County*, 702 S.W..2d 554 (Mo.App.W.D); and, *Nietzke v. Williams,* 109 S.Ct. 1827 (1989). *IN SUMMARY*: " [T]hat approach, as a procedural matter, was plainly erroneous." *Madeiros*, 911 A.2d 251 (S.Ct. R.I.).

WHEREFORE, appellants pray the Motion be sustained in whole, or in part.

Respectfully submitted,

/s/ Debbie Ventimiglia
Debbie Ventimiglia,
5817 Runnymede Place
Imperial, MO. 63052
314-780-2256
636-660-1536

/s/ Vincent Ventimiglia
Vincent Ventimiglia,
With and for minors,
N.V., and J.V.
5817 Runnymede Place
Imperial, MO. 63052
314-780-2256
636-660-1536

CERTIFICATION OF SERVICE

Comes now, the undersigned, and does duly certify, that a true and correct copy of he foregoing has been sent, via, U.S. Mail, first class, postage prepaid, this 6th day of July, 2009, to the following:

Daniel Tobben,
Kevin Behrnt
7701 Forsyth
Clayton, MO.
Suite 800
63105, and;

Jennine Adamek Moore
Kenneth Goleaner
1010 Market St.
20th floor
St. Louis, MO.
63101

Clerk of the Mo. Ct. of Appeals, ED
815 Olive St.
St. Louis, MO. 63102.

/S/ Vincent Ventimiglia

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
Division Three

VINCENT VENTIMIGLIA, et al., DEBBIE VENTIMIGLIA, N.V., a minor, J.V., a minor,	) Appeal from) St. Louis) County)
Plaintiffs/Appellants,	) Honorable) Judge) Kintz
Vs.	) Appeal NO.) ED91597
ST. LOUIS, C.O.G.,INC., d/b/a TWIN RIVERS WORSHIP CENTER, T. BRYAN CUTSHALL, NORMAN MCFALL, TERRY JONES, and AARON BUCK,	)))) Filed:) March 24,) 2009
Defendants/Respondents.	)

Before Robert G. Dowd, Jr., P.J., Clifford H. Ahrens, J., and Sherri Sullivan, J.

MEMORANDUM AND SUPPLEMENTING ORDER AFFIRMING JUDGMENT PURSUANT TO RULE 84.16(B)

This memorandum is for the information of the parties and sets forth the reasons for the order affirming the judgment.

THIS STATEMENT DOES NOT CONSTITUTE A FORMAL OPINION OF THIS COURT. IT IS NOT UNIFORMLY AVAILABLE. IT SHALL NOT BE REPORTED, CITED, OR OTHERWISE USED IN

UNRELATED CASES BEFORE THIS COURT OR ANY OTHER COURT. IN THE EVENT OF THE FILING OF A MOTION FOR REHEARING, OR TRANSFER TO THE SUPREME COURT, A COPY OF THIS MEMORANDUM SHALL BE ATTACHED TO ANY SUCH MOTION.

Introduction

Vincent and Debbie Ventimiglia, and N.V., and J.V., minors, (collectively Appellants), appeal from the judgment of the trial court dismissing their petition with prejudice for failure to state a claim upon which relief can be granted. We affirm.

Factual and Procedural Background

Respondent Terry Jones (Jones) is the attorney for St. Louis C.O.G.,Inc., d/b/a Twin Rivers Worship Center (TRWC), of which Appellants are former members. After several instances of conduct by Appellant Vincent Ventimiglia (Ventimiglia), Twin rivers sought to obtain a restraining order against Ventimiglia, via, Jones. On behalf of Twin Rivers, Jones filed a request for a temporary restraining order(TRO), and permanent injunction, to enjoin Ventimiglia from harassing, threatening or contacting Jone's clients and specifically enjoining Ventimiglia from attending church services at Twin Rivers. The trial court granted the TRO and Ventimiglia entered into a consent preliminary injunction order on October 16, 2006. Subsequently, the suit was dismissed without prejudice.

On February 22, 2008, Ventimiglia filed a petition against Jones and Twin Rivers, alleging

malicious prosecution and intentional infliction of emotional distress, and requesting a declaratory judgment. On APRIL 22, 2008, Jones filed a motion to dismiss the petition, which was heard before judge Jamison on May 2, 2008. On April 30, 2008, by order of the trial court, the petition was amended by interlination to include Appellant Debbie Ventimiglia on the signature page, and Ventimiglia was appointed next friend of the minor appellants.

On May 9, 2008, Appellants filed a motion for change of judge from Judge Jamison. On May 9, 2008, without notice to the other parties, Appellants filed and presented to Judge Kintz a motion for leave to file a first amended petition, which was granted.
The motion for change judge was granted on May 21, 2008, and it was ordered that all pending motions would be heard upon reassignment to the new judge, Judge Kintz.

On June 11, 2008, Judge Kintz heard all pending motions, and granted Jones' motion to dismiss, dismissing Appellant's petition with prejudice for failure to state a claim. Judge Kintz also denied appellant's motion for leave to file a first amended petition, because the litigation had already been dismissed and the amended petition failed to state a claim, as well. Twin Rivers' motion to dismiss was also granted, and the petition was dismiss with prejudice as to Twin Rivers as well.

Appellants then filed a motion to amend, vacate, reopen, correct or modify for good cause, the judgment of June 11, 2008, and supplement to said motion, arguing that his motion for leave to file a first amended petition had been granted, and thus Respondent's motions to dismiss that had been granted on June 11, 2008 were actually moot.

On July 10, 2008, the trial court heard appellants' motion, acknowledged the filing of the amended petition, dismissed the amended petition, with predice, for failure to state a claim, and denied the motion. This appeal follows.

Points on Appeal

In their first point, Appellants posit the question whether the trial court abused it's discretion, was clearly erroneous, and exceeded its' jurisdiction by sustaining Respondent's motions to dismiss Appellant's petition, because the motions were moot when Appellants amended petition was timely filed and granted by the trial court.

In their second point, Appellants present the issue of whether Respondents were in default when they failed to file a timely response to Appellant's first amended petition, thereby making the judgment of trial court sustaining respondent's motions to dismiss appellant's petition, which were moot, null and void.

In their third point, appellants query whether they were denied a fair and impartial proceeding by a set of biased and prejudiced judges, court reporters, and bailiff.

In their fourth point, appellants ask this court to consider whether they were denied due process and equal protection of the law when their civil action was improperly dismissed on a motion to dismiss, where the trial court failed to follow the strict rules of pro se litigants, to wit; that a motion to dismiss shall not be granted unless the curt can declare beyond reasonable doubt that appellants could prove no set of facts that entitled them to relief on any theory of law.

Standard of Review

When reviewing the trial court's dismissal of a petition, this court determines if the facts pleaded And the inferences drawn therefrom state any ground for relief. Manzer vs. Sanchez, 29 S.W. 3d 380, 383 (Mo.App.E.D. 2000). We treat all facts alleged as true and construe allegations liberally and favorably to the plaintiff. Id. When the trail court fails to specify it's reasons for dismissing the petition, we presume the trail court acted for one of the reasons stated in the motion to dismiss. Id. Dismissal will be affirmed if it can be sustained on any ground supported by the motion, regardless of whether the trial court relied on that ground. Id.

A petition will not be dismissed for failure to state a claim if any set of facts asserted which, if proved, would entitle the plaintiff to relief. Id.

Discussion

Whether mooted motions were Moot and Respondents In default as to the First Amended Petition.

When a first amended petition is properly filed, motions to dismiss the original petition are properly overruled as moot. See; Wells vs. Nulton, 898 S.W.2d 653, 654 (Mo.App. W.D. 1995). In he instant case, the motions to dismiss appellant's original petition were indeed moot when appellants properly filed their first amended petition. However, respondents re not required to file a motion to dismiss the first amended petition for it to be dismissed by the trial judge for failure to state a claim. In the instant case, trial judge independently reviewed the first amended petition and dismissed it sua sponte for failure to state a claim.

A trail court may raise the issue of the

sufficiency of a petition sua sponte because such defect is jurisdictional. Wright vs. Dept. of Corrections, 48 S.W. 3d 662, 666 (Mo. App. W.D. 2001). In deciding whether to dismiss for failure to state a claim upon which relief can be granted, the trial court does not address the merits of the claim. *Wright,* 48 S.W.3d at 666; Sandy, 39 S.W. 3d at 857. " If under the facts pleaded a plaintiff is entitled to declaration of rights at all, the petition is sufficient for that purpose even though it advances a mistaken contention of law." *Wright,* 48 S.W. 3d at 666 citing *Sandy,* 39 S.W. 3d at 856, quoting *City of Hannibal vs. Marion County,* 745 S.W. 2d 842, 845 (Mo.App. E.D. 1988).
In Wright, the trial court raised the issue of the sufficiency of the petition sua sponte thirteen days after the petition was filed. Id at 666. Indeed, it did so prior to the defendant entering an appearance of filing any motions or responsive pleadings. Id. As a result of the court's sua sponte review, the petition was dismissed for failure to state a clam upon which relief can be granted. Id.

This analysis applies to Appellant's second point on appeal, that Jones and Twin rivers were in default for failing to file a response to appellant's first amended petition. This argument, again, has no bearing on the trial court's sua sponte dismissal of Appellant's first amended petition for failure to state a claim and thus should be dismissed. In any event, the trial court looked at both the original petition and the first amended petition and determined that neither one stated a claim upon which relief can be granted for the same reasons. Appellants must address the merits of that decision on appeals, which they have not done.

As such, this court, as a courtesy, will raise it

for them, and sua sponte address the merits of the trial court's dismissal of Appellants' first amended petition for failure to state a claim. We will reverse the trial court's dismissal of a plaintiff's action for failure to state a claim, if, after viewing, the pleading in it's broadest intendment, the allegations invoke principles of substantive law which may entitle a plaintiff to relief. Boyer vs. City of Potosi, 38 S.W.3d 430, 435 (Mo.App.E.D.2000). Appellants' first amended petition asserts claims for (1)malicious prosecution,(2) negligent infliction of emotional distress, (3) intentional infliction of emotional distress, and (4) declaratory judgment.

Malicious Prosecution

There are six elements that a plaintiff must plead and prove to prevail in malicious prosecution action: (1) the commencement of a prosecution against plaintiff; (2) the instigation of the prosecution by the defendant; (3) the termination of the proceeding in plaintiff's favor; (4) lack of probable cause for the prosecution; (5) that defendant's conduct was motivated by malice; and(6) plaintiff was damaged as a result. Crow vs. Crawford & Co. 259 S.W.3d 104, 114 (Mo.App. E.D. 2008).

In the instant case, the commencement of the prosecution against appellant Ventimiglia was the restraining order sought to enjoin him from further harassing Respondent Twin Rivers and certain members thereof. This action was not terminated in Appellant's favor (element 3) by being voluntarily dismissed without prejudice by Twin Rivers. In order to show that voluntary dismissal without prejudice by the filing party is in appellant's favor, they must allege that it was dismissed with an attempt to

abandon the claim. Zahorsky vs. Barr. Glunn and Morris P.C. 693 S.W.2d 839, 842 (Mo.App. WD 1985). (General rue is that a dismissal without prejudice does not alone conclude the cause with finality, which is a requirement for the prosecution to have terminated in appellant's favor.Id. Linn vs. Moffitt 73 S.W.3d 629, 633 (Mo.App.E.D. 2002)("Termination is effected by a final judgment on the merits, a dismissal by the court with prejudice, or by abandonment of the action.")

In fact, there is affirmative evidence in the record that Twin Rivers did not intend to abandon it's claim for protection against appellant Ventimiglia, as respondent Twin Rivers' voluntary dismissal was premised on a agreement with appellant Ventimiglia that he would not return to Twin River's property. Therefore, Twin Rivers intent was clear that it would reassert a claim for protective order if that agreement was not abided by appellant Ventimiglia. Accordingly, appellants failed to plead the third element claim for malicious prosecution, and thus the trial court did not err in dismissing that claim for failure to state a claim.

In addition, appellants did not plead facts as a foundation for the lack of probable cause element (element 4) for the claim for the restraining order. The restraining order was granted, based upon the underlying facts outlining the conduct of appellant Ventimiglia that prompted Twin rivers to seek an order of protection against him. In their petition, Appellants fail to set forth facts belying that Twin Rivers had probable cause to seek such protection against appellant Ventimiglia.

Negligent and Intentional Infliction

of Emotional Distress

To prevail under negligent infliction of emotional distress, a plaintiff must show: (1) the defendant should have realized that it's conduct involved an unreasonable risk of casing distress, and (2) the emotional distress or mental injury must be medically diagnosable and sufficiently severe to be medically significant. Gibson vs. Brewer, 952 S.W.2d 239, 248-49 (Mo.banc 1983). To state a claim for intentional infliction of emotional distress, a plaintiff must plead extreme and outrageous conduct by a defendant who intentionally or recklessly causes severe emotional distress that results in bodily harm. Gibson, 952 S.W.2d at 249, K.G. v. R.T.R., 918 S.W. 2D 795, 799 (Mo.banc 1996). Not only must bodily harm be alleged, but that harm must be med-ically diagnosable and must be of sufficient severity so as to be medically significant. Young vs. Stensrude, 664, S.W.2d 263, 265 (Mo.App.ED 1984).

Appellants make no claim of any medically diagnos-able bodily harm that resulted from the emotional dis-tress they allege to have suffered. Bodily harm is a required element of a claim of both negligent inflic-tion of emotional distress and intentional infliction of emotional distress, and failure to allege it is fatal to both claims.

Declaratory Judgment

Appellants asserted a request for a declaratory judgment in their petition asking the trial court to or-der Twin Rivers to allow appellants to return if appel-lants so choose. This court will not unilaterally inter-fere with the agreement between Twin Rivers and Ap-pellant Vincent Ventimiglia that Twin Rivers would drop the restraining order against appellant Ventimi-glia if he agreed not to come onto Twin River's property.

The remaining allegations under the claim for Declaratory Judgment are that Twin Rivers and appellant's constitutional rights. However, such constitutional violation claims are only cognizable against state actors, not private parties. See, e.g. Ross vs. Ford Motor Credit Co. 867 S.W.2d 546, 550-51 (MoAPP>W.D. 1993). The rights provided to our citizens by the Constitution protect them from state action. State vs. Mahan, 971 S.W.2d 307, 314 (Mobanc 1984). "[T]he principle has become firmly embedded in our constitutional law that the action inhibited by the...Fourteenth Amendment is only such action as may fairy be said to be that of the states. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful." Id. Citing, Shelley vs. Kraemer, 334 U.S. 1, 13 68 S.Ct. 836, 92 L>Ed. 161(1948); see also, Shapiro vs. Columbia Union Nat'l Bank and Trust Co. 567 S.W.2d 310, 317-18 (Mo.banc 1979)("the dichotomy set forth in the fourteenth amendment between deprivation by the state...and private conduct ...against which the fourteenth amendment offers no shield goes back as far as the civil rights cases.")

For all of the foregoing reason, the trial court did not error in sua sponte dismissing appellant's petition for failing to state a claim. Accordingly, Points I, and II, are denied.

Denial of a Fair Hearing by Biased Judges, Court Reporters, and Bailiff

Appellants' third point is an abstract statement of law, with no facts in support, making it impossible for this Court t review to determine if there was any error on the part o the trial court. Appellants claim that they were denied a fair hearing" by a set of

biased judges, court reporters and bailiff." Rule 84.04(d)(1)[13] provides:

(d) Points relied On.

(1) Where the appellate court reviews the decision of a trial court, each point shall:
(a) identify the trial ruling or action that the appellant challenges;
(b) state concisely the legal reasons for the appellant's claim of reversible error; and
(c) explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error.

The point shall be in substantially the following form:
" The trial court erred in [identify the challenged ruling or action], because [state the legal reasons for the claim of reversible error], in that [explain why the legal reasons, in the context of the case, support the claim of reversible error]."
Rule 84.04(d)(4) provides that "[abstract statements of law, standing alone, do not comply with this rule."

For the following reasons, Point III, is denied.

<u>Rules Regarding pro se litigants</u>

Pro se litigants are held to the same standards as any other litigants. "Pro se litigants must satisfy all of the relevant rules of procedure and this court cannot hold a pro se litigant to a lower standard of performance than a litigant who is represented counsel." In re Marriage of Garrison, 158 S.W.3d

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[13] all rule references are to M.R.Civ. P. 2008, unless otherwise indicated.

336,337 (Mo.App.S.D. 2005).

The standard of proof cited by appellants as that for pro se litigants-"a motion to dismiss shall not be granted unless the court can declare beyond a reasonable doubt that appellants can prove no set of facts that entitle [sic] them to relief on any theory of law,' is actually the [14]standard of proof in criminal cases. In civil cases, the standard of proof is reponderance of the evidence, and in criminal case the standard of proof is beyond a reasonable doubt.
See; Martinez vs. State, 24 S.W.3d 10,21(Mo.App.ED 2000)(different requisite standards proof in criminal cases, to-wit: state must prove guilt beyond a reasonable doubt, compared t the mere preponderance of evidence standard required in civil actions).

Appellant's Point IV is without merit and therefore denied.

Conclusion

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[14] A limited exception exists in city ordinance violations, which are civil matters, but require courts to apply the stricter criminal standard, proof beyond a reasonable doubt, because of quasi-criminal nature of the proceeding. St. Louis County vs. Afshari, 938 S.W.2d 303,304 (MoApp. E.D. 1997.

The judgment of the trial court is affirmed.[15]

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[15] The Court also has under submission the following motions that were taken with the case: Twin Rivers' Motion to Strike Appellant's Brief and Motion to Dismiss Appeal; Appellant's Motion to Dismiss Jones' Brief and Sanction Respondents and their Attorneys; Appellant's Motion to Dismiss Twin rivers' Brief and Sanction Respondents and their attorneys; Appellant's Motion for Leave to File Two Briefs; Appellant's Motion for Leave to File Reply Brief, out of time; Appellant's Motion to Allow Exhibit's A-G; Appellant's Motion to File Additional Pages in Appendices. All motions are denied.

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
DIVISION THREE

VINCENT VENTIMIGLIA,	)	ED91597
DEBBIE VENTIMIGLIA,	)	
N.V., a minor,and,	)	
J.V., a minor,	)	
	)	
Plaintiff/appellants,	)	Appeal from the
Vs.	)	Circuit Court of
	)	St. Louis County
ST. LOUIS, C.O.G.,INC., d/b/a	)	
Twin Rivers Worship Center,	)	Hon.Judge Kintz
T.Bryan Cutshall,	)	
Norman McFall,	)	
Terry Jones, Aaron Buck,	)	
	)	Filed March 24,
Defendants/Respondents.	)	2009

Before Robert G. Dowd, Jr. P.J., Clifford H. Ahrens, J., and Sherrie B. Sullivan, J.

ORDER

Vincent and Debbie Ventimiglia, and N.V., and, J.V., minors, appeal from the judgment of the trial court dismissing their petition with prejudice for failure to state a claim upon which relief can be granted. We have reviewed the briefs of the parties and the record on appeal and conclude that the trial court did not commit error. An extended opinion would have no precedential value. We have, however Provided a memorandum setting forth the reasons for our decision to the parties for their use only. We affirm the judgment pursuant to Mo. Rule of Civil Procedure 84.16(b).

PER CURIAM. A28. APPENDIX #4

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

VINCENT VENTIMIGLIA, et al.,	)	Denied on
	)	May 7,2009
Appellants,	)	
	)	
-vs.-	)	Appeal No.
	)	ED91597
	)	
ST. LOUIS, C.O.G., INC., et al.,	)	
	)	
Respondents.	)	

MOTION FOR REHEARING, REHEARING ENBANC, TO SET ASIDE THE JUDGMENT, OR IN THE ALTERNATE, TRANSFER TO THE MISSOURI SUPREME COURT

Comes now, appellants, Vincent, and Debbie Ventimiglia, with minors, N.V.,and J.V., and file for rehearing in accordance to M.RC.P. 84.17, and do restate appellants' brief, reply briefs, and oral arguments, herein, and for the reasons stated therein, this Motion, captioned above, should be granted.

1. This Court handed down it's opinion on March 24, 2009, and this Motion for Rehearing is filed March 30th, 2009, well within the fifteen day period for rehearing, according to Rule 84.17.

2. This Court of Appeals panel misstated law, and facts, as stated by appellants' brief, reply brief, and oral arguments, and did it purposely to harm appellants, as the record supports. This Court is

filled with clever experts, knowing how to deflect issues.

Factual and Procedural Background "ERRORS" in the Court's opinion

a. Appellants were never members of Twin Rivers Worship Center.

b. The affidavit filed by T.R.W.C. was proven to be false, and the DVD entered into evidence by T.R.W.C. was edited and proven to false by an expert witness. L.F.P.p. 17-14, 135-158,164-166, 173-180, 186-189, 204-205, 295-307, 308-314, 316-320, 321, 322-328. SURELY THIS COURT OVERLOOKED THESE PLEADINGS OF APPELLANTS. This Court did not review the file, or it COULD NOT have come up with the opinion it did on March 24, 2009.

c. The suit was dismissed without prejudice, because T.R.W.C. abandoned their suit after all of their calamities were unveiled by pretrial procedures, and 9 witnesses for the defense were subpoenaed for the trial just a couple of weeks away. When appellants learned of the attempt for the dismissal, appellants came before this court with a mandamus to order the judge in the lower court who refused a counterclaim solidifying appellants rejecting any agreement to have his 1st Amendment restrained by the appellees. L.F. (all references above in b.) With exhibits in Motions to Dismiss Resp.'s Briefs, incorporated herein, and restated.

d. Appellants, DID, on May 9, 2008 file Request Leave to file 1st Amended Complaint,(*FAC*), with the FAC, **and plaintiff DID notify respondents**, contrary to this Court's facts on page #3 of the opinion, stat-

ing, " without notice to the other parties. L.F. 204 205, 206-234. There is [1]valid certification in these pleadings. **Plaintiffs were properly before the Court, and defendants were noticed. Why did this Court not review appellants' file? L.F. 204-205.**

e. Mr. Ventimiglia never did any wrong in any church service, especially T.R.W.C..

An egotistical pastor who did not like Mr. Ventimiglia, an ordained minister, to challenge the pastor's grandiose living style, thus, begging mountains of money from the innocent congregation. The communications between pastor Cutshall and Mr. Ventimiglia was done privately, clergy to clergy, and the pastor made it published, in an egregious manor, using extreme hyperbole, slandering, defaming, and libeling, Mr. Ventimiglia, and his family, then the appellees manufactured a false affidavit, and commenced to prosecute Mr. Ventimiglia, falsely, under the color of law, in the Circuit Court in St. Louis County. Read, and review the file, herein, please.

f. **THERE IS NO DOUBT, CLEARLY SHOWN IN THE RECORD, EVEN THOUGH, THIS COURT TRIES TO CONFUSE THE ISSUE, OR MAYBE MISUNDERSTANDS, OR IS CONFUSED,ITSELF, THAT JUDGE KINTZ, GRANTED THE FIRST AMENDED COMPLAINT OF APPELLANTS, THAT INCLUDED THE ADDITIONAL CLAIM, WITH NEW FACTS, ISSUES, THEORIES, SUPPORTED**

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[1] See: *State v. Teer,* 29 Mo. Lexis 12 Mo. Enbanc 1/29/09; Legislature enacts procedural manor, that; the statutes MUST be followed. Not made for discretion, but must be followed. NO TIMELY PLEADINGS---DEFAULT.

BY FACTS, DAMAGES, AND PRAYER, AND ON MAY 9, 2008, ALL OF THE PREVIOUS FILED MOTIONS, ON BOTH SIDES, WERE NULLIFIED, OR MOOTED OUT. AND THAT THE JUNE 11, 2008 HEARING WHERE JUDGE KINTZ DISMISSED WITH PREJUDICE, WAS ERRONEOUS, ****_AND THE COURT HAD NO JURISDICTION TO DO THAT_. ****APPELLEES CLAIM APPELLANTS DID NOT APPEAL THE JUNE 11, 2008 RULING ON APPEAL, BUT THE ONLY JUDGMENT WAS JULY 10, 2008 HEARING FOR REHEARING, AND OBJECTED TO, PROPERLY, AND THAT JUDGMENT AND LITIGATION BEHIND IT, IS UNDER APPEAL. L.F. 351-352. &(SEE APPENDICE L). BUT THE COURT DID NOT RECOGNIZE THE OBJECTIONS OF APPELLANTS, AND THE COURT CONTINUED WITHOUT JURISDICTION, AND DISMISSED APPELLANTS'CASE WITH PREJUDICE WITH ALL OF THE, ALREADY " NON EXISTING " MOTIONS TO DISMISS, OF APPELLEES. THIS IS ABUSE OF DISCRETION AND PLAIN ERROR, AND THAT IS HOW APPELLANTS ARE BEFORE THE COURT. IT WAS DONE AFTER THE COURT HEARD ARGUMENTS ON THE MOTIONS, (ACCORDING TO THE APPELLEES' BRIEFS, AND THE COURTS OPINION), NOTWITHSTANDING, THIS CANNOT BE A SUA SPONTE DISMISSAL, AS THIS COURT ERRONEOUSLY REPORTS IN IT'S OPINION. _R.S.MO. 506.375,360, APPELLANTS AREN'T IN PRISON!_

g. On May 9, 2008, appellants' FAC was granted by judge Kintz. Making all previous motions to dismiss moot and the Original Suit nullified. There was nothing before the Court except appellants'

FAC, and the standard of review was to ***give every inference***, and ***admitted true*** in plaintiff's FAC, and read from all four corners, and interpreted liberally, as stated in *Haines*, supra, *Connelly*, supra, *Denton*, supra, *Williams*, supra, *Boyer*, supra, *Hyat*, supra, *Young*, supra, *St. Charles County*, supra, *Smith*, supra, *Ronnollo*, supra, *Leatherman*, supra, *Sherer*, supra, See: L.F. P.p. 173-179 AND SEE; 72-75, 78-90, 135-158, 164-166, 295-307, 308-314, sworn affidavit, 316-320, 322-328.

h. Appellants EVEN TRIED TO HAVE AN EVIDENTIARY HEARING BUT WAS FLATLY DENIED, L.F. P.p. 58-62, on numerous genuine issues of material facts in dispute, in violation *Sherer*, supra.

i. IF THIS COURT WOULD HAVE GIVEN THE CONSIDERATION TO PLAINTIFFS' FACTS, CLAIMS, ALLEGATIONS, [2]AVERMENTS, AND ADMITTED THEM TRUE, APPELLANTS WOULD

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[2] This Court did just the opposite that the *Wright Court* did. The *Wright Court* did not, and could not rule on the merits, because the standard of review would have been improper. THEREFORE, as appellants stated many times in their briefs, oral argument, and motions to Dismiss, appellants were before the Court properly on plain error, and abuse of discretion, but appellees were not, and the Court reviewed IMPROPERLY, on the merits. It was no courtesy to appellants, this Court was trying to make a jackass out appellants, and laugh at them, hoping to confuse appellants and ridicule them. That is why this Court did not publish the opinion. What would the world say?

HEADED FOR TRIAL ON THE MERITS. Respondent's facts are fictional, and must be disregarded.

1. Appellees entered false evidence into the court, under the color of law, and did maliciously prosecute an innocent man with outrageous conduct, deserving nothing less than conviction by the court. This is supported by facts and the court had to admit them true.

2. With that, Terry Jones withheld exculpatory evidence to not exonerate Mr. Ventimiglia causing Mr. Ventimiglia irreparable damage, *Elrod*, supra. It is fact, supported by the record, and the Court had to admit it true.

3. Not only that, but pastor Cutshall, CEO of T.R.W.C. stated clearly that Terry Jones, just made up the affidavit with false contents in order to move the court against Mr. Ventimiglia. It is fact, supported by the record, and the Court had to admit it true.

4. In so doing these outrageous crimes against the court and appellant, Mr. Ventimiglia, including his family, who was always present, caused severe intentional, and negligent emotional distress and the Ventimiglia's should be compensated by the court, via, the defendants, herein. This is fact, supported in the record, and the Court must admit it true. See, all L.F. references herein.

5. There are all of the elements supported by facts in the file, that show the six elements of Malicious Prosecution. L.F. P.p. 207-208.

6. That the claim of Negligent, and Intentional Infliction of Emotional Distress had all of the elements to support it, supported by facts. L.F. P.p. 209-212.

7. Why did this Court not review appellants' file on pages, 212-222, wherein there are forty five, (45) averments showing ultimate facts, and disputed facts, to show that appellants had a very viable, and real case against defendants?

8. Why did this Court overlook L.F. P.p. 223-226, wherein, appellants supplied five (5) averments of genuine issues of disputed facts about Terry Jones?

9. Why, also, did this Court not review the file and mention in the L.F. P.p. 226-229, wherein appellants clearly show ten (10) averments, clearly showing that appell-ants had a very viable and real case against Dr. T. Bryan Cutshall, Norman McFall, Aaron Buck, and St. Louis, C.O.G., Inc., which are filled with allegations, supported by very real facts, that any jury, or unbiased , and reasonable person would exclaim OUTRAGEOUS CONDUCT, and rule in favor of appellants?

10. With this Court's expertise, why did this Court out of justice, fairness, and equity, see that the respondents, acted under the color of law against appellants, and declare, itself, the outrageous actions of appellees, in courtesy, to appellants, and the minor children?

11. All of these facts, allegations, theories, and issues, are in the file, and THEY MUST BE ADMITTED TRUE. Why did this Court overlook them?

12. Why did this Court not address the fraud of the attorneys that was outlined, very clearly before this court, by totally lying about Judge Perry's memorandum, and only supply that memo-

randum, in part, to support their lies to the Court? This shows the intent of criminal behavior, and premeditation to fraud the Court. Appellants will find a Court to listen, if this Court chooses to go along with the fraud.

3. This Court's opinion constitutes a manifest injustice, AND AN ABUSE OF DISCRETION, because the Court of Appeals changed the theories of appellants' appeal to affirm judgment of the lower Court, by misstating the facts, and not allowing appellant's reply brief, with appendices, and the exhibits in the motions to dismiss, that show the continuation of fraud by the attorneys and the lower courts, and the reply briefs did straighten out the incorrect misstatements, and fraud of the attorneys, before this court, and appellants complete record, with the reply brief, appendices, and exhibits MUST be heard and ruled upon, correctly. Everything was filed according to the Rules, (*appellants are pro se*), any problems, were caused by respondents fraudulent briefs, and this Court is holding appellants to heightened standards. This Court knows that if appellants record was opened and examined, it would surely show the continuation of the outrageous, criminal fraud of the attorneys, and this Court is causing compound manifest injustices against the law, the Court, the appellants, and their minor children, violating Missouri and U. S. Constitutional privileges, rights, immunities, and freedoms of appel-lants. This Court's actions are very chilling, and disturbing, and outrageous.

4. This Court's opinion in this case failed to comply with mandatory rules of the Mo. S.Ct. as it relates to the filing, and prosecution of civil actions in this state. THESE RULES DO NOT ALLOW THIS

COURT TO MAKE EXCUSES FOR THE *DERELICTION OF THE DUTY* OWED BY THE APPELLEES, IN THE LOWER COURT, TO TIMELY COMPLY WITH THE RULES OF CIVIL PROCEDURE, BY FILING AN AMENDED MOTION TO DISMISS, AFTER THE FIRST AMENDED COMPLAINT WAS DULY FILED BY APPELLANTS, ON MAY 9, 2008. THERE ARE SERIOUS ISSUES OF FRAUD OF THE COURT AT STAKE, AND THE COURT IS TRYING TO ERASE THE FACTS, BY ERASING APPELLANTS' RECORD.

5. It was called to the attention of the entire panel in this case that the appellees were perpetrating fraud on the federal courts in Missouri by utilizing the Circuit Court, and this Appellate Court as a sanctuary to deprive appellants of meaningful access to the courts, and meaningful access under the law, and this Court over looked it. *(SEE: transcription of the hearing, exhibit A, with affidavit, exhibit B).*

6. The entire opinion written by this Court altered and changed the *landscape*, of this action and this appeal, and in fact issued an order that the opinion would not be published so that other litigants will not be aware of the fraud committed against appellants by the attorneys, and the Courts, allowing it to go on, unabated, by the unreported opinion issued in this case. The not reporting of the opinion was and is nothing short of a "*SHAM*" to obstruct appellants' rights to meaningful access to the federal courts. Appellants have viable issues at stake, before this Court.

7. These appellees used this Court as a sanctuary and perpetrated a fraud on the Ventimiglia family with intentions, and actions to deny appell-

ants meaningful access to the Courts. THIS COURT'S UNREPORTED OPINION, HAS DONE JUST THAT. *Lynch v. Mo. Dept. of Cor.,* Mo. App. *Lexis* 1434, *at*, p.5, ED 2008, ***Can't Advocate.***

8. The appellants challenge the Courts opinion sustaining the lower courts' action dismissing the entire law suit, sua sponte, which was a fabricated lie. No place in the complete file has sua sponte been used, or mentioned by any party or the lower court judge. In fact, this court contradicts itself in it's opinion. This Court used the *Wright*, case to ensure, indeed, that sua sponte, does happen to prisoners, only. RSMO 560.360. BUT, that same case says, the following, below, and was reversed, as this case should be;

"[29] Thus, it is apparent that the trial court's dismissal of the petition for failure to state a claim upon which relief could be granted was, in essence, a ruling on the merits of Wright's claim. But "**the court cannot dismiss [Wright's] petition for failure to state a claim by finding in favor of respondent on the merits." Sandy, 39 S.W.3d at 856**. As noted in Sandy, a ruling on the merits is procedurally contradictory because it is an implicit acknowledgement that *Wright* stated a claim for declaratory relief in his petition. *Id.* Dismissal under these circumstances is reversible error. *Id.* at 857. *Highlights added.*

****

APPELLANTS ARE DIFFERENT THAN WRIGHT, WHY IS THIS COURT BEING SO PREJUDICED AGAINST APPELLANTS? WHY DID NOT THIS COURT USE IT'S COURTESY,
AND DISCRETION TO SHOW FAIRNESS AND JUSTICE TO APPELLANTS, WHO ARE NOT, PRISONER, PRO SE, BUT RATHER HONEST,

LAW ABIDING CITIZENS, BEING DAMAGED, FOR BEING PRO SE, IN A PREJUDICED AND BIASED WAY, TRYING TO CONFUSE THE ISSUES, AND IGNORING APPELLANTS PLEADINGS, AND RECORD, TO AFFIRM THE JUDGMENT OF THE LOWER COURT?

****

[30] While we must reverse the trial court's dismissal of Wright's petition, we express no opinion regarding the merits of Wright's action. Moreover, this opinion should not be read as precluding a trial court from raising the question of the sufficiency of a petition sua sponte or from dismissing a petition where the averments do not entitle the plaintiff to a declaration of rights. Rather, we hold only that the trial court's implicit disposition on the merits in this case is not procedurally consistent with a dismissal for failure to state a claim. "The question is not whether the petition's stated theory demonstrates an entitlement to the declaratory relief sought, 'but rather it is whether under the averments of the petition plaintiff is entitled to a declaration of rights at all.'" Id. (quoting City of St. Peters v. Concrete Holding Co., 896 S.W.2d 501, 504 (Mo. App. E.D. 1995)). *Id.*

****

THE COURT IN THE WRIGHT CASE REVIEWED THE RECORD OF WRIGHT, BUT THIS COURT DID NOT, OR IT WOULD NOT SEE THAT APPELLANTS HAVE A JUSTICIABLE CONTROVERSY IN THEIR DECLARATORY JUDGMENT. NOTWITHSTANDING, APPELLANTS' DECLARATORY JUDGMENT REQUEST SUPPORTS THAT APPELLANTS NEVER AGREED TO ANY AGREEMENT BY DEFENDANTS AS USED BY THIS COURT, ERRONEOUSLY, TO HELP THE APPELLEES.

WHY DID THIS COURT NOT LOOK AT APPELLANTS' AVERMENTS? See: exhibit C, Declaratory Judgment in file. L.F. p.#230, attached.

****

[31] For the foregoing reasons, the trial court's judgment dismissing Wright's petition for failure to state a claim is reversed and the case is remanded with directions "'to permit the parties to properly submit the issue for adjudication in a manner consistent with this opinion, either by a motion for summary judgment or by [other appropriate means].'" Id. (quoting City of Hannibal, 745 S.W.2d at 846). *Id. Wright was a prisoner.*

[32] All concur. *Id. See: Brown v. Mo. Dept. of Cor. 353 F3d, 1038(8th Cir.) 2004.*

9. **THIS COURT MUST REVERSE APPELLANTS' CASE WITH THE VERY SAME LAW IT USED IN IT'S OPINION, AFFIRMING THE LOWER COURT'S JUDGMENT. This is not a jury tried case. See: RULE 84.13(b).**

10. This Court used the *Manzer v. Sanchez,* but completely denies appellants' due process by not using that standard of review. The Court never reviewed appellants file, or it would have seen the facts from the file, supplied in the contents of this Motion in the file and it most assuredly supports appellants' case, and proves it states claims upon which relief can be granted. Besides that, according to *Wright*, and *Manzer*, and the standard of review this Court uses, subsequently, the lower Court ruled on the merits of the appellees, and the appellants, and the lower Court cannot dismiss for the plaintiffs failing to state a claim, because that review, declares

appellants did, indeed, state a fact to where they are entitled to relief. The lower Court made plain error, and abused it's discretion, and this Court must reverse appellants case, according to it's own set of cases it supplied as arguments against appellants.

11. These appellants challenge the court's opinion sustaining the lower Court's action, dismissing the entire law suit, sua sponte, which was a deliberate, misrepresen-tation, by this Court.. The lower Courts' dismissal, from the record, manifests itself, that the dismissal was from the Motions to Dismiss because there were no facts, findings, or conclusions of laws, which always follow sua sponte dismissals. NOTWITHSTANDING, the record shows clearly, from the respondents briefs and erroneous lower Court, orders in the legal file, that the motions were argued before the judge, in the courtroom. This is not sua sponte, the lower Court was not alone, or on it's own. This Court contradicts itself.

a. How can the judge rule sua sponte, after the motions were argued in his court before him, according to the opinion in question, except for the Declaratory judgment, was never argued, and the attorneys were with the judge when he dismissed it in closed chambers, to deny appellants, due process, and equal protection of the law.

b. But then again, according to *Wright*, the reversal on the Declaratory judgment request, should be granted, as it was in *Wright*. In reality, according to the appellants' record, the Court refused to hear appellants' case, and ex parte'ed, appellants in Division 10, and 5, and the attorneys, and the judge, in Div. 5, on July 10, 2009, conspired in closed chambers to rewrite the orders, in an illegal manor.

c. CAN THE JUDGE AND THE ATTORNEYS

PARTICIPATE, TOGETHER IN SUA SPONTE, DISMISSING APPELLANTS' CASE, BY EX PARTE' ING THEM FROM THE HEARING, AS THESE APPELLEES HAVE DONE, HEREIN THIS UNDERLYING SUIT? See: L.F. 295-307, 308-314, (sworn affidavit), 316-320, 322-328.

d. This court is using appellants arguments and confusing them with respondents arguments, trying to confuse the record. But we will use your argument and still prove this Court's argument, dead wrong, with the Courts' own opinion. (See Opinion, P.#3).

" ***On June 11, 2008, Judge Kintz heard all pending motions***, and granted Jones' motion to dismiss, dismissing Appellants' petition against Jones with prejudice for failure to state a claim." *Id. highlights added*

" ***On July 10, 2008, the trial court heard Appellant's motion***, acknowledged the filing of the amended petition, dismissed the amended petition, with prejudice, for failure to state a claim, and denied the motion." *Id. highlights added* See: L.F. p.343, This Court left out the word, " ***argued***," in order to try to create some sua sponte fantasy, to help appellees. So according to appellees own signed order, they argued the motions before the court. See: *Denton V. Hernandez*, 112 S.Ct. 1728; and, *Williams v. Nietsky,* 491 U.S. (1989).

11. This Court deliberately tried to hijack appellants' appeal process, by not properly reviewing the legal file, and using, only appellees' briefs. If per chance, the Court over-looked, or cannot, will not, or should not allow appellants' reply brief and other motions, exhibits, and appendices, it still would find in the FAC, and Plaintiff's Motions in Response to Defendants' Motions to Dismiss, over twenty (20) ge-

nuine issues of material facts in dispute. DOESN'T IT SEEM STRANGE THAT THIS COURT COMPLETELY IGNORED, OR OVER-LOOKED, THESE DISPUTED FACTS, IN IT'S OPINION, FROM APPELLANTS' FAC? It was "screamed," throughout appellants' appeal briefs, and oral arguments. THIS COURT OVER LOOKED THESE CLAIMS, AND DISPUTED FACTS, IN IT'S ATTEMPT TO HELP THE APPELLEES. THIS COURT, AND THE LOWER COURT, CANNOT ADVOCATE FOR ANY PARTY, OR PARTIES, AS IT IS DOING, HEREIN. BUT, THAT WOULD MEAN THAT A PRO SE, WOULD BE VICTORIOUS, AND THE COURT SYSTEM IN THIS STATE IS GEARED AGAINST PRO SE LITIGANTS. THIS IS EGREGIOUS, AND OUTRAGEOUS, AND CAUSING MORE NEGLIGENT, AND INTENTIONAL SEVERE EMOTIONAL DISTRESS ON THE VENTIMIGLIA FAMILY, BY THIS COURT AND THE ST LOUIS, COUNTY, AND CITY, JURISDICTIONS. APPELLANTS RAISED THESE ISSUES IN THE FEDERAL COURT, IN FRONT OF JUDGE PERRY. MAYBE NOW, HOPEFULLY SHE WILL LISTEN, THIS TIME?

12. Appellants are pro se, and this Court has heaped such a harmful burden upon appellants by not reviewing and ruling on the merits of their *Motions to Dismiss Respondent's Briefs*, and allowing respondents to use material that was immune from any court scrutiny, such as the material in Terry Jones' brief, and allowed appellees to escape the punishment for their evil doing, and is continuing the damage against the Ventimiglia family. See; Motion to Dismiss Terry Jones brief, with, EXHIBIT'S, A-G. (even though this Court denied the motions, this Court was supposed to review them, and their con-

tents are now under appeal with the complete record, in this case).

13. Terry Jones and St. Louis C.O.G.,INC.'s briefs were filled with material that was outside of this court's jurisdiction, because the material provided by respondents, was not preserved in the ten day time limit and therefore respondents supplements, were not timely and appellants objected to the material timely; *e.g.*

2. Also, on page #2, appellants raised the argument of Terry Jones' violating Civil Rules of Procedure 84.04? Appellants would add that Rule 81.17 has been desecrated as well by Mr. Jones, and his attorneys, in that;

3. Appellants filed their statement of the issues and facts that appellants were intending to prove in their appeal. (L.F. 344-347) NOTICE OF APPEAL, (including Statement of Issues the appellant intends to present on appeal).

4. This document was filed on 10/14/2008.

5. Respondents had ten days, according to Rule 81.17, to, " serve upon appellant and file in the appellant court designation of additional parts which the respondent intends to include in the record on appeal and any additional issues the respondent intends to present on appeal." *Id.*

6. NOWHERE IN THE FILE IS ANY DESIGNATION OF ADDITIONAL PARTS WHICH THE RESPONDENT INTENDS TO INCLUDE IN THE RECORD ON APPEAL, OR ANY ADDITIONAL ISSUES THE RESPONDENTS INTEND TO PRESENT ON APPEAL. ***Id. Motion to dismiss Jones' brief.*** ***SURELY THIS COURT OVERLOOKED THESE ISSUES TO HELP APPELLEES?***

14. Appellants' reply brief, was filed properly, and

timely and the court rejected it. Then appellants spent hundreds more dollars and refiled with a Motion to File Out of time, as soon as possible, and the Court accepted the [3]Motions to Dismiss Respondents' briefs, and the Appendices A-P, Motions to Dismiss with exhibit's A-G, had been filed.

15. Not only did this Court completely through negligent actions " hamstring " pro se, appellants, but it made many misrepresentations of appellants' appeal, by using the improper statements, MISINTERPRETATIONS, legal arguments, misleading legal argument, as well as the improper standard of review, and erased any arguments, by appellants, against the

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[3] THE EXHIBITS, APPENDICES, AND MOTIONS TO DISMISS ARE NOT FRIVOLOUS, OR BASELESS, BUT VERY VIABLE, IMPORTANT, AND RELEVANT, AND PRESERVED, TO PROVE APPELLANTS THEORIES, CLAIMS, AND ISSUES ON APPEAL. THIS COURT VERY WELL, DID INDEED, HOLD APPELLANTS TO HEIGHTENED STANDARDS, IN A VERY PREJUDICIAL MANOR, AND IT HAS DONE GREAT DAMAGE TO APPELLANTS AND THEIR CLAIMS. THIS COURT MUST HAVE OVER LOOKED THESE ISSUES AND EVIDENCE IN APPELLANTS REPLY BRIEFS AND EXHIBITS WITH APPENDICES, AND MOTIONS TO DISMISS RESPONDENTS BRIEFS. AND NOW THE COURT MUST LOOK INTO THESE MATTERS AND RULE APPROPRIATELY. RESPONDENTS BRIEFS WERE IN SUCH VIOLATIONS OF COURT RULES, BUT THIS COURT DECIDED TO SHOW PREJUDICIAL FAVOR TO RESPONDENTS, AND AGAINST APPELLANTS, BECAUSE APPELLANTS ARE PRO SE.

misrepresentations of respondents. This is clearly error and not showing any fairness to appellants, AND A CLEAR, ABUSE OF DISCRETION.

16. This Court allowed respondents to win their case, and they were not before the Court for the proper review standards, as outlined in the Motions to Dismiss, Oral Arguments, and Appellant's Reply Briefs. This court overlooked these facts, and issues.

17. According to the Standard of Review, page 4, of the Opinion, the Court must treat all facts pleaded and the inferences reasonably drawn therefrom that state any ground for relief. *Manzer v. Sanchez*;

a. This Court said it reviewed, even though, it was an improper review, and review standard, the record on appeal, but overlooked important issues that would help appellant, and misinterpreted the finding to confuse appellant's issues, to help appellees, and did not treat all of appellant's facts well pleaded with inferences reasonably drawn therefrom, stating any grounds for relief,

b. nor did this court allege as true and construe allegations liberally and favorably to the plaintiff, as outlined in APPELLANT'S RECORD, as the Court was supposed to do. See; L.F. P.p.. 72-75, 78-90, 135-158, 164-166, 173-180, 186-189, 190-193, 196-198,.

18. IF, this Court was going to be generous, and courteous, as it insinuated, when it said, " As such, this Court, as a courtesy, will raise it for them, and ***sua sponte***, address the merits of the trial court's dismissal of appellants' first amended petition for failure to state a claim." *Id.* Page #6. Of this Court's opinion;

A. Then why in the world did this Court NOT read the legal file and report the facts correctly? Th-

ere was much equity this Court could have helped with, versus subjectivity.

B. And why did this Court refuse appellants' Reply briefs, with appendices;

C. And why did this court not rule on the sanctions motions in this file, or allow the motions to dismiss respondents briefs be ruled upon and used in the evidence?

D. But rather, took respondents faulty, and erroneous facts and continued the fraud of the lower court? See: L.F. 206-234, 252-259.

E. The opinion is outrageously prejudiced and biased against appellants, and must be reversed. Appellants have encounters a gang of pettifogging, snollygosters. The laws must equally apply to appellants, and not twisted, or perverted, and applied erroneously to prejudice, the appellants to deny appellants due process and equal protection of the laws.

F. And the Court is hiding it's outrageous conduct by not reporting the opinion, and denying appellants due process, and meaningful access to the Courts, violating U.S., and Missouri Constitutions. See: Motion to Publish Opinion.

G. It seems that this Court should be neutral, and judge the record, objectively, verses, subjectively, thus, showing clear prejudice against appellants.

H. Appellees, other than C.O.G., INC., and Terry Jones, have, again defaulted in their appeals because they did not respond to the appeal, except they claimed that they were not served properly in the lower court. These appellees were entered into the Court by appearance, via, Motions to Dismiss, by their attorney Jennine Adamek Moore, and there-

fore, submitted to the jurisdiction of the Court.

I. These [4]defaulted, appellees, T. Bryan Cutshall, Norman McFall, and Aaron Buck, have defaulted in their appeal and this Court must rule accordingly. There was NO appeal from them. Their Motions to Dismiss for Insufficient Service, was not ruled upon. APPELLANTS ASK THIS COURT TO MAKE FINDINGS ON THIS ISSUE, BECAUSE THIS COURT NEVER MENTIONED IT, AND IT IS RAISED FROM BOTH SIDES. The proposed orders on these issues were drafted by both sides, this Court must have *overlooked* this vital issue. L.F. P.p. 45-48, 186-189.

Note* appellees claim appellants only appealed the judgment of July 10, 2008? There was no judgment on June 11, 2008, but that decision is under appeal, as is the whole case is. See: L.F. P.p. #351-352, Amended N.O.A., Issues on appeal & briefs.

PRAYER AND CONCLUSION

Appellants conclude that this Court is

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[4] According to, *Perego v. Dodge*, 16 S.Ct. 971 (1986), defendants entered appearance, and by motion to dismiss. Even a defendant who responds and submits to Court jurisdiction is PRECLUDED from raising " NO SERVICE,' on appeal.

Honorable, according to the title of the Court, and would request that this Court not join the ranks, or continue the ranks, of the lower courts, and would suggest and request that this Court allow a complete review of all relevant issues, briefs, motions, oral arguments from both parties, that this court must have overlooked, or misinterpreted, in appellants legal file, briefs, and oral arguments, IF INDEED, IT POSSIBLY COULD. AT LEAST IT WOULD LOOK BETTER FOR THE COURT.

And, when this Court *looks*, and *does see* that appellants have overcome the elements to rule against them, used against it by this Court, and the lower Court, then this Court will reverse itself, and grant favor to appellants, **as judge Bresnahan did in Division eighteen, when he granted a partial declaratory judgment in favor of appellants and against respondents, giving the victory to appellants, as stated in his order and judgment. L.F. 258-259**.

The evidence is clear in the legal file and all of the pleadings before this Court. This Court must read appellants record, and rule accordingly, with the correct facts, supported by the record. Please use the intended courtesy implied in the original opinion, and rule as the courtesy, is genuine, and not some joke.

IN THE LEAST, ACCORDING TO; *WRIGHT, with, MANZER, and other cases cited, herein.* APPELLANTS DID STATE A CLAIM, OR CLAIMS, THAT ENTITLE THEM TO RELIEF, AND THIS COURT MUST REVERSE.

Again, appellants are praying that this Court reverse itself either in whole, or in part, or set this case for mediation, from the above record, and the pleadings, briefs, and oral arguments, in this case,

FINDING APPELLEES IN DEFAULT IN THE LOWER COURT, AND IN THIS COURT, as out-lined herein this underlying Motion, or send this to the Court enbanc, to set aside the ruling of this Court, or in the alternate, please, transfer to the Missouri, Supreme Court.

Very Respectfully submitted,

/s/ Vincent Ventimiglia, /s/ Debbie Ventimiglia
Vincent Ventimiglia, pro se Debbie Ventimiglia
pro se With and for minors, N.V.,
and J.V.
5817 Runnymede Place
Imperial, MO. 63052
314-780-2256
636-660-1536

CERTIFICATION OF SERVICE

Comes now, the undersigned, and does duly certify, that a true and correct copy of he foregoing has been sent, via, U.S. Mail, first class, postage prepaid, this 30th day of May, 2009, to the following:

Daniel Tobben
Kevin Behrnt
150 N. Meramec
Suite 450
Clayton, MO.
63105, and;

Jennine Adamek Moore
Kenneth Goleaner
1010 Market St.
20th floor
St. Louis, MO.
63101.

/s/ Vincent Ventimiglia.

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

VINCENT VENTIMIGLIA, et al.,	)	FILED
	)	4/6/2009
Appellants,	)	
	)	
-vs.-	)	Appeal No.
	)	ED91597
	)	
ST. LOUIS, C.O.G., INC., et al.,	)	
	)	
Respondents.	)	

POST-DISPOSITION MOTION TO PUBLISH AN OPINION

Comes now appellants, Vincent, and Debbie Ventimiglia, with and for minors, N.V., and, J.V., and do move this Court, in accordance with Supreme Court Rule 84.17(a),(3), and request that this Court publish it's opinion.

This Court handed down an opinion on March 24, 2009, and under Rule 84.16, it refused to publish it's opinion, for no relevant reasons. Appellants have a very solid case, including their appeal, which was totally ruined by this Court by it's misrepresentations, misleading arguments and legal arguments, including the laws this Court cites as support for their decision, is clearly a demand for this Court to reverse appellants case, and remand it back to the lower Court. Appellants incorporate and restate the contents of the Motion for Rehearing, filed contemporaneoususly with this Motion, as well as the contents of

the briefs, motions, and oral arguments, involved in this appeal.

This case has special precedential value due to the facts that;

1. There is a federal law suit against the parties of this suit and other defendants. Some being judges. Which is under appeal in the 8th Circuit Court of Appeals.

2. The central basis of the federal suit is for appellants being denied due process, equal protection of the law, being denied meaningful access to the Missouri Courts, especially the 21st Judicial Circuit, and this is very good example of the Missouri Courts, " shamming " appellants in a continuation of the lower Courts, supporting appellant's federal claims.

3. It will be used as evidence in the federal law suit, or a new suit, to show the federal judge the behavior of the Missouri Courts against the Ventimiglia family.

4. This Court must not tamper with federal evidence, but report and have published this case, herein, with proper findings, facts, and have hearings on the disputed facts.

5. This Court has completely denied appellants due process, procedural due process, and equal protection of the laws, by reshaping the landscape of appellants facts, claims, theories, and issues, and will not publish it, so that no one will see the sham court set-up, to deny appellants justice, and equity, prejudicing them, in a way that causes irreparable damages to the innocent family, by violating laws, and affirming the lower courts judgment with it's fraudulent behavior of closing the Courts, and justice to appellants.

6. This case has valid questions of law surrou-

nding, and involved, in the appeal;

a. including the lower Court not having jurisdiction, to dismiss;

b. mooted motions to dismiss, used against appellants;

c. nullified first amended complaint;

d. splitting cause of action;

e. outrageous fraud;

f. default of defendants, and their clients;

g. biased and prejudiced judged, causing manifest injustices to appellants;

h. malicious prosecution, under the color of law;

i. negligent, and intentional emotional distress;

j. a whole family being damaged, including two minors;

l. improper standards of review, by respondents;

m. immune evidence used in respondents' briefs;

n. untimely, and irrelevant material used by respondents;

o. wrong case law used by this court to deny appellants justice;

p. valid laws supporting appellants facts, claims, and issues;

q. severe violations of Rule 84, in respondents briefs, ignored by this Court;

r. plaintiffs being denied meaningful access to the Missouri Courts, and being denied due process, and equal protection of the laws.

7. THEREFORE, appellants move, and demand,

this Court publish this opinion in this case, showing the way appellants are treated, or correct the manifest injustices.

Respectfully submitted,

/s/ Vincent Ventimiglia
Vincent Ventimiglia, pro se

/s/ Debbie Ventimiglia
D.Ventimiglia,pro se

With and for minors, N.V., and J.V.
5817 Runnymede Place
Imperial, MO. 63052
314-780-2256
636-660-1536

CERTIFICATION OF SERVICE

Comes now, the undersigned, and does duly certify, that a true and correct copy of he foregoing has been sent, via, U.S. Mail, first class, postage prepaid, this 6th day of April, 2009, to the following:

Daniel Tobben
Kevin Behrnt
150 N. Meramec
Suite 450
Clayton, MO.
63105, and;

Jennine Adamek Moore
Kenneth Goleaner
1010 Market St.
20th floor
St. Louis, MO.
63101.

/s/ Vincent Ventimiglia

TRANSCRIPT OF ORAL ARGUMENT March 24, 2008, Mo. Ct of Appeals

THE COURT:
You may proceed, sir.

MR. VENTIMIGLIA: Okay. My name is Vincent Ventimiglia and I am the Appellant pro se in this case of – of Vincent Ventimglia, et al vs. St. Louis Church of God, et al and I am pro se on myself and my wife is pro se. And relatively the case is very simple, Your Honor; our theory of this case is myself – I am an ordained minister and I was a practicing minister in a church, Twin Rivers Worship Center, and myself and the pastor had some doctrinal differences and we were communicating privately. This pastor took it upon himself to attack myself and my family in a service Sunday morning with hundreds of people there. Come to find out, he had been going through his elders and other hierarchy of the church and spreading bad seed and disassociating myself with the church. It came to a head on a Sunday morning, which is the incident in question, in 2006, September 16th. We were literally tarred and feathered under this attack and thrown out of the church. Fine. We left the church peacefully. Come to find out this church thru its attorney, Terry Jones, had conjured up some affidavit with – filled with false testimony and facts, which was proven to be false thru

15 the course of the litigation in div – Division 18, by expert witnesses and thru discovery.
16 At least, two discoveries where Terry Jones threw his hands up to the judge and says;
17 "we don't have any evidence".
18 Finally, through the culmination of the case it took over a year in Division 18 under
19 Judge Bresnahan, Terry Jones and Church of God withdrew their complaint right before
20 trial, after we submitted interrogatories, admissions and summons for twelve witnesses to
1 prove them wrong. They were going to testify in our defense. And they claim that they
2 withdrew their case and they did not abandon their case, when in fact, the record supports
3 different.
4 There's Motions to Dismiss in there with Exhibits A-G and our appendices in our legal
5 file A-E – by the way; could I ask the Court a question.
6 On Casenet, it never mentioned anything about the exhibits and the appendices, if they
7 were allowed or not. There were motions before the Court and I've contacted the clerks,
8 even up to today and I cannot get a response. I know the brief has been filed. Has all the
9 appendices and exhibits been filed and accepted as well?
10 THE COURT: As far as I know, they have and we're taking all those motions with the
11 case –
12 MR. VENTIMIGLIA: I understand.
13 THE COURT: -- to rule on.
14 MR. VENTIMIGLIA: Good. And – and – and those appendices and those exhibits will

support our claims.
We come to this Court on plain error and abuse of discretion review standards. Terry Jones and Church of God have come to this Court and have implemented their own supplemental index, which is improper. They did not respond within the ten (10) day limit, if they weren't satisfied with out Notice of Appeal and our issues and what we were going to raise. They forfeited that right to enter their supplemental indexes and they're not properly before this Court. And as far as that goes, the de novo is not properly before this court. There's no facts, findings, conclusions of law in the record. We did request it more than once, and it's outlined in our pleadings and briefs before this Court. And we had a first amendment that was granted two times. Now there's some controversy about the first amended complaint about when it was granted, and if I kept it a secret, if I did it illegally someway has been mentioned by Church of God in their motions, which I don't control the docket and I don't write the orders or sign the judge's name. They are in the docket. They are in the file.
After the June 11th hearing, when the judge dismissed my case without allowing me to participate, excluding me from the records, talked over and around me and my witnesses, just – just directly to the attorneys and the orders showed the balance of my accusations against them and we were excluded. He dismissed the first amended complaint. After June 11th I went up to the legal file and I have

been before this court on two mandamuses
and a motion to appoint a master, and it's outlined in my pleadings as well. During the
trial in the course of – of the pleadings in Division 18 so, that we could receive fairness,
we filed for evidentiary hearings to show that their evidence was false and that we were
innocent. Terry Jones, through red herring attacks and – or attempts, and a lot of
diversionary tactics went completely around it. He's an attorney and I guess that's what
they're trained to do, Your Honor; but nevertheless, the judge granted the first amended
complaint, and I discovered it when I went up to the clerk's office to get certified copies
to bring up mandamus before this court on the lower court trial errors and their
prejudicial bias and behavior, and I discovered there was first amended complaints that
were granted.
Judge Jamieson granted a first amended complaint – even though it was a first amended
complaint or interlineations on April 30th, 2006 and judge – after we were transferred
from Judge Jamieson's court to Judge Kintz's Court, Judge Kintz, on May 9th granted us
first amended complaint. Now, the law is very clear on that and statutories, as well as
case law as precedent. It's outlined in our pleadings, that once a first amended complaint
is granted the original complaint is nullified. We did file first amended complaint with
the request and when the judge granted leave he did accept the first amended complaint.
There were new claims in there. There was –

from an intentional infliction of emotional
distress. There was negligence infliction of emotional distress. There were new issues,
new claims, new facts and new theories that was totally disregarded by the court. And
the judge went on to dismiss our case with mooted motions to dismiss.
Like I said, after June 11th when I found that there was a first amended complaint, the
transcript on July 11th for motion on rehearing on Rule 7501, is clear. I brought it to the
attention of the court. Actually, I did bring it to the attention of the court before that,
cause I filed motions and they were filed before properly and timely before July 10th,
letting the court know of its error, letting these attorneys know of the error so they would
have time to respond properly with their pleadings, according to the rules, so that they
would have standing and not default on their clients, which they did with their eyes
opened. They were notified and they were aware of it fully, yet they continue to try to
push us down and put their erroneous pleadings above us and expect the court to accept
their pleadings, which the court did in the lower court. That's why we're before your –
this court on this issue. And that's plain error and abuse of discretion and it caused a

manifest injustice to our case and caused us to be dismissed with prejudice.
Just the fact that the judge dismissed with prejudice alone shows the judge was
prejudice. We were attacked. We had over

twenty genuine issues and material fact in
4 dispute and they're outline in the first amended complaint and they were before that court
5 and they're before this court, and that the judge had no reason to dismiss our case.
6 Like I said, the judge dismissed our case with prejudice by trying to revive dead, mooted
7 motions to dismiss without ordering Appellees to respond in a timely manner. The judge
8 dismissed with prejudice with no fact findings or conclusions of law as requested in legal
9 file 295 thru 307 and 315 and it was timely.
10 The judge may have been relying on the case law that states that when a judge does not
11 give his facts, findings and conclusions of law, that the motions to dismiss their reasoning
12 is what is accepted for the judges motion to dismiss. But again, their motions were
13 before the court, they were moot. The judge had nothing to rely on as far as their motions
14 and their claims and their motions.
15 The original complaint was nullified, the first complaint was before the court there was
16 no challenges to it, the judge was aware of it in time before the motion for a rehearing.
17 He had plenty of time to reverse himself and to reinstate our case or to allow the first
18 amended complaint and to allow them to respond to it properly, which would have been
19 proper and that's what the judge within good reasoning should have done, according to
20 the laws that we have learned that apply to these types of situations.
21 And we are pro se and the standards are somewhat different. The court is required to

22 give facts and findings and conclusions to read from all four corners to give a liberal
1 interpretation. The court was bound, duty bound to apply any theory upon Appellant's
2 favor in our claims. The judge – when I brought the first amended complaint to him, as
3 the transcripts will show Exhibit L in Appendix, that's the transcripts of July 10th, I was
4 not allowed to present my case – or my pleadings to this case. These attorneys went into
5 the judge's chambers after the hearing, compared the Exhibit L – the actual transcript to
6 the orders these attorneys wrote in the judge's chambers without us. We were bound in
7 the courtroom by the bailiff and a policeman wouldn't let us participate in any orders,
8 wouldn't let us say anything. They went in the chambers and completely rewrote what
9 the judge said in the – in the courtroom on the transcript, they put in dismissing our
10 declaratory judgment and other things. This is completely against the law and yet they
11 did it and the record's before this court. They frauded the court. These same attorneys
12 frauded this Court when they quoted Judge Perry's dismissal. We – I filed, myself and
13 my family, in the Federal Court filed a case on these attorneys and the Church of God for
14 the conspiracy for what they were doing, denying us due process, legal protection,
15 meaningful access to the court, and the judge dismissed our case without prejudice,
16 because she said the case was under appeal and she would not – it's clear more than one
17 time in her memorandum, she would not

exercise jurisdiction because of the Rooker-
18 Feldman Doctrine. She said the issues were under appeal in this court and she was
19 passing the baton back to this court for this court to rule on our issue. They come to this
20 – when they used that argument in Judge Perry's court, Rooker-Feldman, and splitting
21 cause of action and the judge seen their argument there and put the court – or, put the
22 case here where the judge saw fit.
1 Now, these attorneys are changing colors – they come into this court and change Judge
2 Perry's ruling – that they could lose their license for that. And you've got the record
3 right before you, they said the judge dismissed my case even though she issued – or
4 granted jurisdiction she said the claims did not state a claim or relief could be granted.
5 It's in their briefs with the supplemental index with Judge Perry's order. It is fraudulent,
6 erroneous and misplaced and they deliberately do it to try to hook-wink this court and
7 promote their case continually.
8 Mr. Jones's brief is in violation of Rule 84.04C, 84.13A, 81.17, 81.12D – C, D and E,
9 and with fraud upon the court as well as Church of God Incorporated, as well. As – as I
10 stated before, they have come to this court with de novo standards and are not before the
11 court properly. They cite plain error in their briefs, there is no plain error argument,
12 there's no plain error language, it is not in the table of cases, it is not in their arguments, it
13 is not in their points relied on. They are not before this court. Besides that, as we

14 mentioned before, there's no facts, findings, conclusions of law for de novo review. The
15 court – in the lower court abandoned its duty to give the facts, findings and conclusions
16 of law for this court to review properly under de novo standards. In order to allow for the
17 court to review de novo standards the court must have rendered conclusions, we said that.
18 They are not for the trial court, we said that. Plaintiffs are being abused – or reviewed for
19 abusive discretion and plain error, and appel – Appellees are not properly before the court
20 on those issues.
21 Loyola Academy vs. S & S Roof Maintenance says, for example; " the decision whether to
22 allow a plaintiff to amend a complaint will not be overturned unless a manifest abuse of
1 discretion," and that's how we're before this Court. If per chance the court could
2 possibly review under the de novo standard, Appellant's claims are supported with the
3 record before you now. If you decide, somehow, you could possibly – or that you will
4 possibly review under those standards Exhibits A through G in the Motion to Dismiss
5 Church of God Appendices A through P in our briefs will surely clear the path for these –
6 you judges to see their plan – we were vital and viable before that court. We had facts.
7 They say we had conclusions only. Like I said, if you study the first amended complaint
8 there's over twenty genuine issues and material fact of dispute. The judge was negligent.
9 He abused his discretion. He caused a manifest injustice and we've preserved the issues.

10 We've preserved them timely. In that transcript of July 10th, I objected – I had first
11 opportunity, over ten objections of not being allowed to present my case. Not being
12 allowed to receive due process. And just being shuffled out the door blindfolded and
13 gagged, literally. And that's how we are before this Court. We have preserved plain
14 error with the rules and the language and it's in our brief. And – thank you.
15 THE COURT: Thank you, sir. Mr. Goleaner:
16 MR. GOLLEANER: May it please the Court.
17 Good Morning, Your Honors, my name is Ken Goldleaner and I represent St. Louis
18 Church of God, Incorporated, which does business as Twin Rivers Worship Center.
19 Before I begin, and I'm going to attempt to be brief cause I think that our Respondent's
20 brief – I hope anyway, adequately sets forth – you know, the real issues in this appeal, but
21 I – I just want to make a couple of comments about Mr.Ventimiglia's statement. I – I
22 think there's a fundamental misunderstanding in this case by Mr.Ventimiglia, as to what
1 the proper standard a review is; but more importantly, what the actual issues in this
2 appeal are. The real issues in this appeal are whether or not claims can be stated in the
3 petition or the amended petition for malicious prosecution or intentional infliction of
4 emotional distress. There are questions of law involved in those and that absolutely is de
5 novo review, by the – by this Court and I think

we – we set that forth pretty clearly in our
6 brief. I just also want to address, Mr. Ventimiglia seems to be intent on – on arguing that
7 there's a sep — there's some sort of additional standard for a – for a pro se litigant, but
8 that – that's not true in the State of Missouri. In fact, in our brief we – we made
9 absolutely clear that we cited the Debaliver Lawrence case that says; -- you know, even
10 as to a pro se litigant, if the petition consists that only concludes and does not contain
11 ultimate facts or any allegations from which to infer those facts a motion to dismiss is
12 properly granted. More importantly, the law in Missouri is perfectly clear that whether
13 or not a pleading states a claim upon which it can be granted is jurisdictional, which
14 means; that it can be erased at any time and which means that it can be raised by this
15 Court sua sponte. So, while I've certainly have issues with some of the things that Mr.
16 Ventimiglia stated as fact here this morning, essentially none of that matters if the
17 pleadings don't state a claim upon which it can be granted. It'ls – it's – it's subject
18 matter jurisdiction can be raised at any time, can even be raised by this Court's sua
19 sponte. And those are the real issues in this case, whether or not the petition or amended
20 petition can be said to – to – to state a claim upon which relief can be granted. And
21 Judge Kintz July 10th, 2008 judgment, which is the only judgment that was appealed from
1 in Mr.Ventimiglia's Notice of Appeal, makes absolutely clear that there were arguments

2 occurred on both the petition and the amended petition. And Judge Kintz specifically
3 found that there was nothing additional in the amended petition that could state a claim.
4 Therefore, he specifically found that neither the petition nor the amended petition could
5 state a claim. And fortunately both the petition and the amended petition are in the legal
6 file and it can be compared. And literally, the only difference, other than a – a few
7 sentences in the Prayer for Relief , the only difference between the two petitions is that he
8 purported to add a claim for negligent infliction of emotional distress, which as we set
9 forth in our brief also cannot state a claim.
10 Just because I think it's set forth in our brief , I – I'm just going to give you a very little
11 background, because there were about five events that this whole case is about. There
12 was the church service that Mr. Ventimiglia referenced that was followed up by a
13 temporary restraining order action filed by Twin Rivers against Mr. Ventimiglia. That
14 restraining order was granted by the court. Subsequently, through some correspondence
15 with the – the church's lawyer, Terry Jones and Mr. Ventimiglia, the church agreed to
16 dismiss without prejudice this restraining based upon the unconditional understanding
17 that Mr. Ventimiglia would not come back to Twin Rivers. That's why the dismissal was
18 without prejudice. Subsequently, he filed a lawsuit for libel and slander alleging
19 defamation against the church. A motion to dismiss was filed on that lawsuit dismissing

the suit. He appealed that to this Court. He then dismissed his appeal and filed a second lawsuit against the church and Mr. Jones, and this time alleging intentional infliction of emotional distress and malicious prosecution. That suit was subsequently dismissed and that's why we are here today. He made reference, I believe, to his Federal lawsuit and indicated that we have some – that we may have improperly relied on one of Judge Perry's orders. I just want to make clear that nowhere in our brief to we even reference Judge Perry's order, or to my knowledge to – to the Federal lawsuit. But I just want to talk very briefly about the real issues in this case. First, it's very clear that; even if every word of his petition is – is true he cannot state a claim for malicious prosecution and there's two reasons why: Two of the elements of the malicious prosecution claim are; That the original action – the malicious prosecution plaintiff must have prevailed in that original action. That's absolutely not present in this case. It was dismissed without prejudice. The law in Missouri, as we set forth in our brief, makes clear that a dismissal without prejudice is – does not make the defendant in the – in the first action a prevailing party. There has to be a clear intent to abandon a claim in order to – or judgment in the original actions favor in order for them to be the prevailing party. That's not present in this case. In fact, one of the exhibits he cited in his petition, in which we cited in our supplemental legal file, as well as in the

appendix to our brief, is the letter from Mr. Jones
16 to Mr.Ventimiglia letting him know that they are not abandoning their claim and that, if
17 he comes back to Twin Rivers they will reassert their right to seek a restraining order.
18 So, that only – right there – I think that element makes clear that – that he cannot make
19 claim for malicious prosecution.
20 The other reason he cannot state a claim is because he has to show that there was
21 no probable cause in the first action. Missouri law is relatively clear that a dismissal
22 without prejudice does not mean that there was no probable cause. More importantly, as
1 we've set forth in our brief a – a – if – if the malicious – if he original action plaintiffs is
2 prevailed in their action then, they can't be said to not have probable cause. The
3 temporary restraining order was granted therefore, they can't satisfy that element. The
4 other claim that he is asserting is intentional infliction of emotional distress. And just
5 very briefly, because I think we've also, adequately addressed this in our – our brief. In
6 order to recover from intentional infliction of emotional distress you have to allege that
7 you sustained bodily harm. And in some cases, it has to be medically significant and
8 medically diagnosable harm. Nowhere in his petition or in his amended petition does he
9 allege any bodily harm whatsoever that resulted from his emotional distress. Therefore, I
10 think, it's clear that no – no intentional infliction of emotional distress claim can be
11 stated. The other reason is because all of his

allegations in that claim are based on the
12 defamation that was the subject of his first action. Missouri law is also very clear that
13 you cannot recover for intentional infliction of emotional distress unless there's
14 something else apart from the alleged defamation, otherwise, you would just be
15 bypassing a defamation claim in which you can recover for emotional distress. His – his
16 defamation claims were dismissed by the courts and this was an attempt to circumvent
17 that and assert an emotional distress claim.
18 Finally, I want to talk about an issue that based in our brief that's another jurisdictional
19 issue and that is the issue of Mr. Ventimiglia splitting his cause of action. The law is
20 Missouri is very clear that when a lawsuit is dismissed by the court, even if it'[s without
21 prejudice, but when it's dismissed for failure to state a claim, it's a judgment on the
22 merits and it's a final appealable judgment. Not only is it unappealable – an
1 unappealale judgment, but Mr.Ventimiglia in act, appealed from that judgment. He
2 ultimately dismissed that appeal and then, filed this second lawsuit. Every claim in this
3 second lawsuit, the intentional infliction of emotional distress, the malicious prosecution,
4 not only should have been filed in that first lawsuit, but it was required to have been filed
5 in that second lawsuit. You cannot simply file a lawsuit, get it dismissed, appeal it,
6 dismiss that appeal and then, file another lawsuit in the third – additional claims that arise
7 out of the same events and transactions and

same parties just to get a second bite of the
8 apple. Again, that – that's a jurisdictional issue that this Court, even though it's now
9 before the trial court can—can absolutely affirm or un -- and with that I would just end
10 by saying; that the law is also clear that a motion to dismiss can be sustained on any – on
11 – on any sustainable grounds, or it can be affirmed on any sustainable grounds. And with
12 that, unless the Court has any questions, I will yield that balance of my time.
13 Thank you, very much.
14 MR. TOBEN: Your Honors, Dan Toben for Terry Jones.
15 I adopt everything that Mr. Goleaner just argued, because most of what's in our brief is –
16 is the same thing.
17 The one thing that I did want to get up and talk to you about is the status of Terry Jones
18 as an attorney. Mr. Jones was not present at the church service which was the basis for
19 the intentional infliction claim. So, I think, even Mr. Ventimiglia said he wasn't a target
20 of that. To the extent that Mr. Ventimiglia may be claiming – I'm not sure if he is or not,
21 that the bringing of litigation is the infliction of emotional distress I think that patently is
22 not the law. There are many privileges that exist with respect to attorneys filing
1 pleadings. With respect to the vexatious – or – or – excuse me, the malicious prosecution
2 action; the case law in Missouri is clear, that an attorney who files pleadings relevant to a
3 cause of action is – is privileged with respect to them. The Mackey laundry case we cite,

Haggar vs. Major and several others, the situation here was that Terry Jones was contacted by his long time client, the Church, they filed the TRO. The affidavit was given by – I forget if it was the pastor or one of the lead administrative people about what had occurred at the incident in church, the TRO was granted, which by itself is – is sign of probable cause. And the reason why you can consider things of that nature is there were attachments to his pleadings. So, part of his pleadings were the granting of the TRO by the court in the subsequent consent preliminary injunction that Mr.Ventimiglia entered into. So, we already had two instances where probable cause was established in addition to all of the privilege issues. And I think, as co-counsel has previously indicated, the case was dismissed without prejudice, which is not prevailing of the merits. But again, separate and apart from – from all of that law, an attorney filing pleadings is protected. And – I mean, the recent incident over in Maryville, Illinois, certainly means it certainly should be within an attorney's right to file something on behalf of a church regarding incidences that occur in the church. So, I don't think there's any basis for saying this is something outside the normal judicial scope, or in any way improper.

With respect to several procedural things that Mr. – Mr. Ventimiglia has said: first of all, we did mention Judge Perry's order and there was a dismissal with prejudice on some of the claims. He had sued the judges, because they were

improperly acting in the state
1 court action. They were dismissed with prejudice. Myself and co-counsel were sued as
2 being state actors who had violated his rights and it was determined that we're not state
3 actors and that was upheld. He is correct that all of the state court issues are preserved
4 and are to be decided by this case under the Rooker-Feldman Doctrine. All their talk
5 about the findings and facts and conclusions of law, that isn't what happens on a motion
6 to dismiss. The motion to dismiss is a non-evidentiary hearing where the court looks at
7 the pleadings. The court correctly looked at the pleadings and determined correctly that
8 they did not state a cause of action. That's what this case is about. All of the collateral
9 procedural issues, I think, are not well taken but they really don't go to the merits of what
10 the lawsuit is about at this position.
11 If the Court has any questions I'd be glad to answer them, otherwise I'm finished.
12 THE COURT: Thank you.
13 MR. TOBEN: Thank you, Your Honors.
14 THE COURT: Mr. Ventimiglia, you may make rebuttal argument.
15 MR. VENTIMIGLIA: First, Your Honor, the arguments of the attorneys are
16 covered in the motions to dismiss. And under the term of their fraud, they had mis –
17 misrepresented every claim that they presented to this court. We've carefully outlined it
18 in the motions to dismiss with all the exhibits with the appendices and our briefs, and it's
19 outlined in our reply brief, as well as our initial

brief.
Mr. Goldling — Goleaner – if the judge ruled properly, but he did not give findings in conclusions of law which is required in a de novo reduced standards of review. How can this Court do the lower court's job, when the lower court was suppose to do its job to help this Court find the correct determination without the lower courts participation and he's completely caused a manifest of injustice to us by doing that. Mr.Golean – Goleaner states that the prayer and damages were only amended with – with a couple of sentences. Then he goes -- right before this Court, he contradicts himself in two sentences like they do continually through their pleadings since the last two years. He says – then he says, oh and then, they amended another claim in a – in an attempt – in a negligent intention of emotional distress. See, he doesn't even know his story – he can't even keep his story straight. People normally can't do that when they are not being truthful. And you've just seen a firsthand account of it right now. It's outlined in our petitions. It's held fast. And I think, it's easily enough put together that you can understand it clearly.

And as far as prevailing party, even though it is covered extensively in there, there's a memorandum in there for prevailing party – Judge Kintz are – ordered a declaratory judgment in our favor. He – he dismissed like Terry Jones did. I – as soon as I found out we immediately wrote him letters refuting it, denying it. It's in the file. We

do not accept any agreement. He's a very clever lawyer. He knows what he can do to put this in there to try to win an argument in this Court. And I hope he doesn't get away with it. We were on top of it. We didn't abandon anything. And as soon as we heard about it we negated. We filed a motion for a counterclaim. We wanted a jury trial. We wanted witnesses to come in and we wanted to prove our case. We had not been allowed to do that through the finagling of these attorneys and the judges in the lower courts allowing them to do that. And they – Mr. Goleaner said there is no physical injury. Physical injury is not necessarily an element of emotional distress – negligent motional distress if there is outrageous conduct. We have outrageous conduct outlined from top to bottom through our claims. And put yourself in my shoes, which you judges are suppose to do; my family, my children – is that two minutes.

THE COURT: You can finish your statement and then, we'll stop.

MR. VENTIMIGLIA: Okay. Put yourself in my shoes; I'm in church with my family and my children and you have this pastor and we're – we're sitting ten rows back and there's hundreds of people around us. He attacks me and starts calling me names and has people standing on their feet screaming at us in a church. And my son, I looked down at him and he's about ready to faint. If that's not outrageous conduct my goodness, there is not outrageous conduct. And that's just the tip

of the iceberg.

It's before you – the judges and we hope you see it and rule favorably on our case so we can get some justice in the lower courts. Thank you.

The COURT: Thank you. The case is heard and submitted.

IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY STATE OF MISSOURI

VINCENT VENTIMIGLIA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
	)	
-vs.-	)	Cause No.
	)	08SLCC
	)	00790
	)	
	)	Div. 5
ST. LOUIS C.O.G. Inc., et al.,	)	
	)	
Defendants.	)	

MOTION TO STRIKE DEFENDANT C.O.G.INC.S' MOTION AND MEMORANDUM TO DISMISS PLAINTIFFS' PETITION FOR NOT STATING A CLAIM, AND SANCTION C.O.G.,INC.S' ATTORNEY FOR VIOLATIONS OF M.S.CT. RULE 4-3.3 CANDOR TOWARDS A TRIBUNAL

*** This Motion for Striking and Sanctions against Miss Moore, was filed in Division 10, on May 12, 2008, and the case was sent to this court, Division 5, 2008, on May 22, 2008. Somehow in the transfer, and all of the confusion that has been surrounding this case, at no fault of Mr. Ventimiglia, this Motion to Strike and for Sanctions against Miss Adamek-Moore, has been

overlooked and it must be heard and resolved according to M.R.C.P., 67.05, " dismissals of plaintiff's civil action effect on...sanctions."

The motion for sanctions was filed on May 12, 2008, and the case was dismissed on June 11, 2008, and the Motion for Sanctions was deleted from the order and the order was corrupted by the defense attorneys to delete the motion for sanctions, against clear established laws and rules. Miss Moore has been warned of the sanction motion and she did nothing to correct the manifest injustices that she has caused to plaintiffs. This court must take action against her for her unethical behavior, and damage she has done to plaintiffs, this court, and herself. This court retains jurisdiction to hear this motion.

"[N]o dismissal, voluntary, or involuntary, of a parties claim in which a Rule 55.03 Motion for sanctions was filed prior to the dismissal shall operate to discontinue such motion for sanctions." *** *(This Motion is not recorded in the main file, docket, but it is in the file. Due to clerk error, either intentional, or unintentional, the case is not recorded in the docket, plaintiff has made numerous complaints about the clerk's errors, and misconduct in this case).*

Jennine Adamek· Moore, and Daniel Tobben, have played fast and loose with this court and with plaintiff's constitutional rights, Privileges, and Freedoms, by using inconsistent theories in accodance with plaintiff's pleadings and have rewritten and masqueraded the orders in a mockery of justice and have damages plaintiff's , and their case in a criminal manor. " *Also, defense attorneys are tampering with the administration of justice in the matter indisputable shown here involves far more*

than an injury to a litigant. It is a wrong against institutions set up to protect and safeguard the public... The public demands that the agency of public justice be not so impotent that they must always be mute and helpless victims of fraud and deceit... Justice Hugo Black, S.Ct. Justice, 1944."

Comes now, plaintiff, Mr. Ventimiglia, for plaintiffs, and does state that defendants, C.O.G. Inc.'s, attorney Jennine Adamek-Moore, should be sanctioned for her abuse of this process, using misleading legal arguments, and making a false statement of material fact, or law to a tribunal, in Motion to Dismiss Plaintiffs Petition, with Accompanied Memorandum. PLAINTIFFS ARE, IN NO WAY, REPONDING TO THE CONTENTS OF THE MOTION TO DISMISS AND MEMORANDUM.

Also, Jennine Ademek Moore, did mislead this court in an order by this court, on May 2, 2008, when she, in preparing the order of the hearing of that day, when Mr. Ventimiglia had to leave the court due to illness, completely deleted plaintiff's motions and status, of that day, and rendered plaintiffs' pleading void of any orders of that day. Completely, trying to undermine this court's authority and duties. Ms. Moore did create a Conflict of interest by usurping attorney privileges for plaintiffs and extracted them from the days orders on their Noticed motions of that day. That violation, is brought before this court in a, "Motion Striking, or Amending the Order, of that day. " It is pending a hearing on May 23, 2008.

Again, in this instance, Ms. Moore has completely stepped outside the boundaries of decency, honor, truthfulness, and professional conduct, and in doing that, she has violated serious

Rules of this court, that would mislead this court and cause serious damage to plaintiffs' pleadings, and it must be stopped and corrected. Ms. Moore must be brought to accountability, and the record must be corrected, to wit,

1. First, Ms. Moore cannot use material outside of this pleading in her Motion to Dismiss plaintiffs pleadings. It is totally, *" not proper and it cannot be considered, in that, defendants are confined to respond, only to defendants' pleadings in this case, only."* Defendants have filed a motion to dismiss, not a summary judgment.

2. Defendants cannot use evidence of any different record in her Motion to Dismiss. Defend-ants are not entitled to bring in any outside records.

3. It is " HORNBOOK LAW, " that plaintiffs are the master of their own theories in their case, and defendants do not have any right to rewrite plaintiffs' litigation. Especially, where one is acting, " pro se."

4. Defendants have filed a suit against plaintiff, Mr. Ventimiglia, and have " jumped ship " and they should have no opportunity to benefit from their own " short comings, and wrong doings." by their actions listed above, they are admitting their lawsuit is frivolous, and they have no options, but to try to rewrite plaintiffs pleading to gain some foothold in their own failed suit against Mr. Ventimiglia and plaintiffs.

5. Defendant C.O.G Inc., and Ms. Moore, are showing extremely bad faith in this court, just as defendants have been clearly showing through their illicit campaign against plaintiffs since 2006; as shown below.

6. In C.O.G. Inc.'s Motion to Dismiss, Ms. Moore

uses the term, " sermon," repeatedly. She is trying to rewrite plaintiffs' suit, in that, plaintiffs' suit does not mention " sermon " one time. Ms. Moore then goes on to draw legal conclusions through her own rewritings of plaintiffs' suit. And she goes on the use case law to support her illicit position in trying to have this court dismiss plaintiffs' suit.

7. Ms. Moore, also uses the term " defamatory," repeatedly, as if plaintiffs are making claims for defamation. Plaintiffs use the term defame in describing defendants behavior, as to show clear recklessness and outrageous behavior, in support of plaintiffs punitive damages.

8. Ms. Moore complains of plaintiffs' suit being unreadable, when in fact, plaintiffs' pleadings are very readable and concise, according to rules governing construction of plaintiffs petition, before this court. Upon reading plaintiffs' petition, this court will see the clear pleading of plaintiff, Mr. Ventimiglia. Ms. Moore is creating a " smoke screen" in trying to confuse plaintiff and this court, by trying to use misleading arguments before this court. Plaintiffs suit can easily be understood. Ms. Moore is knowingly misleading.

9. See page # 6 of defendant C.O.G., Inc.'s, Memorandum, starting at " Count II of Plaintiffs' Petition...(a),(b),(c),(d), are completely void in plaintiffs' pleadings before this court. It is not in plaintiffs pleadings in this court, and it must be stricken. This is the contents of Ms. Moore's argument. Even though, it is true, about the defendants' outrageous behavior, it is not in plaintiffs' pleadings in this court.

10. This argument, Ms. Moore extracted from the lawsuit that plaintiffs filed in Division 7, 2007, but,

plaintiffs withdrew the suit to complete the litigation in Div. 18. See Motion to Dismiss Lawsuit. **Exhibit D[1], pages, # 131-132, in main file**.

11. Defamation is not a claim in plaintiffs' pleading, and Ms. Moore cannot make it a claim through her less than ethical, behavior and this court must correct the record, by striking the Motion to Dismiss, and the Memorandum in Support, and sanction, Ms. Moore for her behavior. The term, " sermon," is never mentioned in plaintiffs' suit.

Respectfully submitted,

/s/ Vincent Ventimiglia
Vincent Ventimiglia, pro se
5817 Runnymede Place
Imperial, MO. 63052
Phone: 314-780-2256
Fax: 636-660-1536
Email: vincentventimiglia@yahoo.com

CERTIFICATE OF SERVICE

Comes now, the undersigned, and does certify that a true copy of the foregoing has been sent, via, first class U.S Mail, postage prepaid, this 8th day of September, 2008, to:

Daniel Tobben
150 N. Meramec
4th floor
Clayton, MO. 63105.

Russell Waters
1010 Market St.
Suite 2000
St. Louis, MO. 63101

/s/ Vincent Ventimiglia
Vincent Ventimiglia

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

VINCENT VENTIMIGLIA, et al.,	)	
	)	
Appellants,	)	
	)	
-vs.-	)	Appeal No.
	)	ED91597
	)	
ST. LOUIS, C.O.G., INC., et al.,	)	
	)	
Respondents.	)	

MOTION TO DISMISS RESPONDENT TERRY JONES' BRIEF FOR OBSTRUCTION OF JUSTICE, AND SANCTION RESPONDENTS AND THEIR ATTORNEYS

1. Comes now appellants in this above captioned appeal and ask this Honorable Court to dismiss respondent Terry Jones' Appeal Brief Response, and to sanction the attorneys, and the law firm of, " Dana McKitrick," involved in their unethical, and continuous misrepresentations, which is nothing more than " fraud," upon this court, in ***bad faith***.

2. These attorneys have violated, over and over, M.S.Ct. Rules of Professional Conduct 4-3.1; 4-3.3; and 4-3.4, to the point that it is egregious, and their Response Brief is filed with the same fraud, these attorneys have been using in this entire case, in violation of Rule 84.04(a), and (c), that has been the main object of appellants' denial of due process and equal protection throughout this entire case, and the

previous judges and courts have been allowing it to continue. This court must take actions against this type of behavior, immediately. With all due respect, and humility, from appellants.

Appellants, at this time, do incorporate, by reference, and do restate the same, from the Motion to Dismiss C.O.G., Inc.'s, brief filed contemporaneously with this Motion to Dismiss, with Exhibit's A-G;

Appellants would also state that respondents are trying to turn appellants' appeal into a summary judgment, by offering facts that are not preserved through appellant's brief and structure of their appeal. Respondents have completely commandeered appellant's appeal and literally, " trashed" their responses with issues that have not been decided in the lower courts. This a clear violation of Rule 84.04(a) (c), and respondent, Terry Jones' Reply Brief must be dismissed, stricken, or disregarded, as to it's authenticity to the Rules of Civil Procedure. See, Appellant's N.O.A ISSUES, filed in this court;

"ISSUES EXPECTED TO BE RAISED ON APPEAL

1. 14th Amendment to the U.S. Constitution, (due process);
2. Violation of R.S.MO. 485.050, M.R.C.P., and other R.S.MO. violations;
3. Refused to give facts, findings, and conclusions of laws;
4. Held appellants to heightened standards;
5. Refused to read appellants pleading from four corners and refused to give liberal review;
6. Court was clearly prejudiced and biased;
7. Standard and Factual Review of pro se litigants;

8. Jurisdiction
9. Other issues will be raised later when appeal is filed." *Id.*

Mr. Jones is again, reframing the facts and issues of appellant's case, and this court must dismiss his reply brief, and sanction Mr. Jones.

Appellants are not submitting to any of Mr. Jones' Points Relied On, but will very quickly show a clear demonstration of the continuation of the fraud in Mr. Jones' reply from page #9 of his Reply Brief, ie.;
(A) ATTORNEYS CANNOT BE SUED FOR MALICIOUS PROSECUTION OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS FOR FILING PLEADINGS IN THE COURT; *Id.*
See, Original Complaint, A.L.F. P.p. 34-37, and, appellant's First Amended Complaint;
A.L.F. P.p. # 223-226;
Mr. Jones is being sued for: " **Statement of Facts About Mr. Terry Jones**

1. Plaintiff does incorporate into this Statement of Facts About Mr. Jones the allegations and facts contained in lines one (1) through forty five (45), above, and does restate them in this section; and also,
2. Mr. Jones alone is in violation of Missouri Supreme Court Rule 4-3.3. (a);

A lawyer shall knowingly: (1) make a false statement of material fact; and

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of it's falsity, the lawyer shall take reasonable remedial measures; (Mr. Jones and defendants knew the affidavit was false,

Pastor Cutshall told plaintiff that " *he, Mr. Jones just put that stuff in there.*" Pastor Cutshall was making an excuse for Norman McFall when Mr. Ventimiglia accused Mr. McFall of creating the lies in the affidavit. **Therefore according to Pastor Cutshall and the record, Terry Jones is guilty of subverting justice and creating multiple offenses that are outlined herein.**

(*please note, that in the whole time the case was pending in Division 18, there is NO denial of these facts presented by Mr. Ventimiglia). (Pastor Cutshall has not made any sworn affidavit denying this charge against Terry Jones, or for that matter no one has). Mr. Jones also created multiple " Conflicts of Interests."*

(c) a lawyer may refuse to offer evidence that the lawyer reasonably believes to be false. **Rule 4-3.7. (a)** : a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a witness. (Mr. Jones had become a witness for the plaintiffs more than once on issues where Mr. Jones should have investigated and found the evidence to be false, therefore Mr. Jones should have withdrew or reported it to the court, instead of continuing the harassment against plaintiff in a malicious fashion, with defendants). **SEE EXHIBIT C, with all exhibits A - L[1].**

3. Mr. Jones violated **Mo.S.Ct. Rule 4-3.5.(c)**, by engaging in conduct intended to disrupt tribunal; and, **Rule 4-3.4.(a)**, a lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; (b) falsify evidence, counsel or assist a

witness to testify falsely, or offer an inducement to a witness that is prohibited by law; (d), in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with legally proper discovery request by opposing party; (please note, *Mr. Jones and defendants have abused the courts in the discovery process in that, Mr. Ventimiglia requested over and over, the seventeen letters (17) that congregants wrote to pastor Cut-shall after the attack upon plaintiffs and the judge ordered Mr. Jones to hand them over. The judge was going to review them in camera, but Mr. Jones and Judge Bresnahan refused, after many prompting by Mr. Ventimiglia, but Mr. Jones refused to hand them over. Instead he filed a motion to dismiss and get out from under the gun, if you will. These letters would undoubtedly prove Mr. Ventimiglia's case and show the reprehensible behavior of defendants in that case).* Also Mr. Jones used " red herring " tactics re-peatedly in trying to thwart Mr. Ventimiglia's whole court process. **SEE EXHIBIT C, with all exhibits A - L[1]. Mr. Terry Jones is guilty of withholding exculpatory evidence, but he dismissed the case to try to further hide the truth.**

4. With the above information and the record at hand, Mr. Jones is in the very least, guilty of conspiracy with defendants in planning and carrying out the MALICIOUS PROSECUTION against plaintiffs and causing GREAT INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS to plaintiffs, as well as, multiple violations of Missouri Supreme Court Rules and this court should, in the very least, sanction Mr. Jones and report his behavior to the Office of the Chief Disciplinary Board in Jefferson City, Mo. And award plaintiffs monetary damages from Mr.

Jones in punitive damages, and/or whatever law and equity, and this court allows as fitting the crimes committed by Mr. Jones with defendants in this case.

5. Terry Jones did violate essential Rules in where he was to investigate the claims by his clients, in that, " an attorney must perform a due diligence investigation concerning the factual basis for any claim of defense." Terry Jones, according to pastor Cutshall, did make up the affidavit with perjurous testimony for Norman McFall to sign and then proceeded into court with it and maliciously prosecuted Mr. Ventimiglia with it for over a year. This caused plaintiffs great emotional distress." *Id.*

THIS COURT CAN SEE MR. JONES TOTALLY MISREPRESENTED APPELLANTS' CASE AND APPEAL BY HIS FRAUD UPON THIS COURT.

B) PROBABLE CAUSE EXISTED FOR JONES TO FILE THE UNDERLYING ACTION; See Exhibits A-G in C.O.G. Inc.'s Motion to Dismiss, and A, above.

C. THE OTHER VENTIMIGLIA PLAINTIFFS WERE NOT PARTY DEFENDANTS TO THE UNDERLYING LAWSUIT; This is Not true, but the Tort law clearly says, if a member of one's family is damaged and they were present, they have a claim. See, cover page of Original Suit, A.L.F. p. #17;

" IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY, STATE OF MISSOURI

VINCENT VENTIMIGLIA,)
DEBBIE VENTIMIGLIA,)
NICK VENTIMIGLIA,)
(a minor child), and,)
JOSEPH VENTIMIGLIA,)

(a minor child),	)	
	)	
Plaintiffs,	)	
	)	
	)	
-vs.-	)	Cause No.
	)	
	)	
ST. LOUIS C.O.G. INC.,	)	Jury Trial
	)	Requested
d/b/a Twin Rivers Worship Center, Inc.)		
T. BRYAN CUTSHALL,	)	
(Pastor and C.E.O.), and,	)	
NORMAN MCFALL,	)	
(Business Agent),	)	
AARON BUCK,	)	
(Video Specialist for T.R.W.C.), and	)	
TERRY L. JONES,	)	
(C.O.G. Inc., Attorney and Agent),	)	
	)	
Defendants.	)	

PETITION FOR RECOVERY OF DAMAGES FOR MALICIOUS PROSECUTION AND, NEGLIGENT & INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; AND REQUEST FOR AN ISSUANCE OF A DECLARATORY JUDGMENT

Jurisdiction Statement

Comes now, plaintiffs, Vincent Ventimiglia, Debbie Ventimiglia, Nick Ventimiglia, (14 years old, a minor), and Joseph Ventimiglia, (12 years old, a

minor), and do petition this court for relief through and, in accordance, with Missouri Rules of civil Procedure." *Id.*
With the following Claims from the Original complaint and First Amended complaint, Below;

"II. CAUSE OF ACTION, TWO :

Negligent & Intentional Infliction of Emotional Distress

Elements of Negligent & Intentional Infliction of Emotional Distress:

1. **Defendants intended to inflict emotional distress upon plaintiffs**; Defendants did, conspire together and intended to inflict emotion distress upon plaintiffs when defendants acted separately or collectively and executing their plans, to wit;

A.) Attack and have others attack plaintiff, Mr. Ventimiglia, and his family;

B.) Recklessly tell lies about Mr. Ventimiglia and have others hate him;

C.) Libelously wrote over one thousand people and tried to convince them Mr. Ventimiglia had a mental problem, and was mentally distorted.

D.) Plan and execute modified and tampered with evidence, in trying to hide facts, that would show defendants guilt in these matters;

E.) Maliciously prosecute plaintiff Mr.Ventimiglia,wrongly; SEE EXHIBIT'S A-L" *Id.*

D. THE UNDERLYING LAWSUIT WAS NOT RESOLVED IN VENTIMIGLIA'S FAVOR; IT WAS DISMISSED WITHOUT PREJUDICE; See, Motion

to Dismiss C.O.G. Inc.'s Reply Brief, and Exhibit's A-G, with A.L.F. P.p. #252-260.

E. JONES WAS NOT PRESENT WHEN THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS ACTIONS ALLEGEDLY OCCURRED AT TWCP; *Id.*

See; A, above, and all of Exhibits, and the Original, and First Amended Complaints, herein.

Mr. Jones withheld exculpatory evidence and held Mr. Ventimiglia , and his family in severe emotional distress for over one year and caused irreparable harm to them.

See, cases cited in Complaint. Pastor Cutshall openly admitted that Terry Jones, defense attorney, " just put the stuff in there." See A, above. Terry Jones, it seems, was the mastermind behind the illegal pursuit against Mr. Ventimiglia and, to this day, is still trying to fraud the courts to escape his penalties for unscrupulous behavior.

Mr. Jones, in his Reply Brief misrepresents Judge Perry's decision on P.p. #35-36, " The Court found that it had jurisdiction over Ventimiglia's entire action there, including the state-law claims because the federal-law claims and state-law claims derive from "a same nucleus of operative fact and are such that a plaintiff would ordinarily be expected to try them all in one place." *Id.* Please see Jones Appendix, P.#9 " The Court lacks jurisdiction to hear these claims under Rooker- Feldman doctrine which preclude this court from hearing claims that " in effect constitute[] a challenge to a state court decision." also, " the Rooker-Feldman doctrine requires that the case be dismissed for lack of subject matter jurisdiction." *Id.* Also, on page 14 , " Without addressing the adequacy of plaintiff's

state law claims, the court declines to exercise jurisdiction over them." *Id.*

MR. JONES COMPLETELY MISREPRESENTS JUDGE PERRY'S ORDERS AND HE IS OBSTRUCTING JUSTICE BY HIS " HOT AND COLD " ACTIONS.

CONCLUSION

THEREFORE, appellants ask this Court to dismiss, or strike Terry Jones' Reply Brief from the record, and reverse the judgment of the lower Court and remand this case back for trial on the merits; and sanction Terry Jones. Letters of warnings have been sent out, this day to the attorneys of record, to correct the fraud in heir Reply briefs, so sanctioning may be proper.

/s/ Debbie Venitmiglia,
Debbie Ventimiglia,

/s/ Vincent Ventimiglia,
Vincent Ventimiglia, pro se
With minors, N.V.& J.V.
5817 Runnymede Place
Imperial, MO. 63052
314-780-2256
636-660-1536

CERTIFICATION OF SERVICE

Comes now, the undersigned, and does duly certify, that a true and corect copy of he foregoing has been sent, via, U.S. Mail, first class, postage

prepaid, this 3rd day of February, 2009, to the following:

Daniel Tobben
Kevin Behrnt
150 N. Meramec
Suite 450
Clayton, MO.
63105, and;

Jennine Adamek Moore
Kenneth Goleaner
1010 Market St.
20th floor
St. Louis, MO.
63101.

/s/ Vincent Ventimiglia.

IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY STATE OF MISSOURI

VINCENT VENTIMIGLIA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
	)	
-vs.-	)	Cause No.
	)	08SL-CC00790
	)	
	)	Division 5
ST. LOUIS, C.O.G. INC., et al.,	)	
	)	
Defendants.	)	

MOTION FOR DISQUALIFICATION OF JUDGE KINTZ, DIVISION 5

Comes now, plaintiff, Mr. Vincent Venti-miglia, pro se, for plaintiffs, and move this court to disqualify itself for the prejudiced and biased acts set out in this underlying petition, listed below, to wit;

1. This court has clearly shown prejudiced and biased behavior against plaintiffs when this court allowed unethical conduct of attorneys, Daniel Tobb-en, and Jennine Adamek-Moore to misrepresent the court orders of July 10, 2008, and June 11, 2008. See; Plaintiffs' Petition for Contempt, pending in this court;

2. This court showed clear prejudice, carelessness, reckless, and biased behavior, when this court did not recognize Judge Jamisons' granting First Amended Complaint status to plaintiffs in Division 10, before this case was transferred to Division 5, and granted mooted motions to dismiss to defend-ants, this clearly shows that Judge Kintz did not read the case of plaintiffs, or even survey the file;

3. This court, in a continuation of it's recklessness and prejudice, did grant plaintiffs another first amended complaint, but did not recognize its own order, and then refused to hear the First Amended Complaint of plaintiffs and would not allow plaintiffs to argue the Amended Complaint, but rather relied on the contemptuous attorneys motions to dismiss plaintiffs whole petition with prejudice, in a clear judicial fiasco, manor;

4. This court refused to allow proper arguments between the parties in the court hearings of 6/11/20-08, and 7/10/2008, but excluded plaintiffs arguments of his noticed pleadings of the days in question;

5. This court allows the contemptuous attorneys to file frivolous pleadings, contrary to clear established rules of the court, and Mo.S.Ct. Rules, after plaintiffs have continuously complained of the record, on the record, and the court will not sanction the attorneys, or even hear, or rule on the motion to sanction the attorneys, against clear violation of court rules, and then still dismiss plaintiffs claims with prejudice, showing contemptuous prejudice against plaintiffs, even after the court lost jurisdiction to act in such a manor;

6. The court is prejudice, rude, disrespectful, and discourteous to plaintiffs in it's actions, and rulings

in this court. See, transcript on July 10, 2008, and orders of the court of the hearings on June 11, 2008, and July 10, 2008.

7. This court, in it's actions, with attorneys of record, has become a conspirator with the attorneys to try to dismiss, reconstruct plaintiffs' pleadings with frivolous stories and facts, make it's own laws and rules, and then force plaintiffs' out of court, violating oath of office, courts rules, laws of the state, and denying plaintiffs Due Process, violating Constitutional provisions for plaintiffs, constituting federal law violations, and setting the stage for a federal lawsuit under TITLE 42, U.S.C., Chapter 21, Section, 1983, 1985; Judge Kintz is a defendant in a federal law suit filed by plaintiffs; case # 4:08-cv-000 1199CDP.

8. Since this court is, potentially, conspiring with attorney, as the record suggests, this court has a direct conflict of interest in these matters and must exclude itself for all fairness to all parties;

9. There is a pending investigation against Judge Kintz with Judge Smith, of the disciplinary, removal, and retirement board, and it surely is a conflict of interest at this time, for Judge Kintz to hear any more of this case, at this time;

THEREFORE, plaintiffs ask this court to disqualify itself, forthwith, and give plaintiffs a change of venue, or, whatever law, equity, and the court determines that would serve the interest of the plaintiffs, defendants and the court in these matters.

Respectfully submitted,

/S/ Vincent Ventimiglia

Vincent Ventimiglia, pro se, for plaintiffs
5817 Runnymede Place
Imperial, MO. 63052
Phone: 314-780-2256
Fax: 636-6601536
Email: vincentventimiglia@yahoo.com

CERTIFICATE OF SERVICE

Comes now plaintiff, Mr. Ventimiglia, and does certify that a true copy of this document has been served upon the below listed attorneys, via, first class mail, postage prepaid, this 8th day of September, 2008;

Daniel Tobben
150 N. Meramec
4th floor
Clayton, MO.
63105, and;

Jennine Adamek-Moore
1010 Market St.
Suite 2000
St. Louis, MO.
63101.

/s/ Vincent Ventimiglia

IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY, STATE OF MISSOURI

St. Louis, COG, Inc.	)	**Ordered:**
	)	**11/30/2007**
Plaintiff,	)	
Vs.	)	No. 06CC-3797
	)	
Vincent Ventimiglia	)	Division 18
	)	
Defendant	)	

ORDER AND JUDGMENT

Defendant's Request For Leave to File Counterclaim, Defendant's Amended Omitted counterclaim against plaintiff, Demand for jury trial And request to join T. Bryan Cutshall and Norman McFall as parties to this case, is denied. The suit filed by plaintiff was voluntarily dismissed by plaintiff on 8/16/07. The Court held the dismissal in abeyance pending the Missouri Court of Appeals and Missouri Supreme Courts' ruling on defendant's writs of mandamus/prohibition which were denied on or about Sept 25, 2007 and on the defendant's request for removal to the United States District Court for the Eastern District of Missouri, eastern division, Which remanded the case back to this court on Oct. 16, 2007.

The Court then entered it's order of dismissal pursuant to rule 67.01 of the Missouri Rules of Civil Procedure on Oct. 17, 2007, and taxed costs against plaintiff. Defendant filed aforesaid Motions on Nov. 5, 2007 and therefore, motions are untimely. The

Curators of the University of Mssouri, et al., vs. St. Chales County, et al., 985 SW2d 810, 814 (Mo.App. 1998).

Defendant's Motion for Clarification on the judgment assessment of costs and order plaintiff to pay defendant, also issue a Declaratory Judgment according to Missouri rules of Civil Procedure 87.02 is partially granted to the extent the court taxes as Costs in favor of defendant and against plaintiff the sum of $180.00 representing costs of 12 subpoenas At $15 each, as stated by defendant at the hearing of his motion for costs. The bond of $100.00, posted by plaintiff is hereby ordered to be released and paid to defendant in partial satisfaction of the $180.00 cost assessment herein leaving a balance due from plaintiff to defendant in the sum of $80.00. In all other respects defendant's motions are denied

All other pending motions are denied. Cause remains dismissed without prejudice at plaintiff's costs.

SO ORDERED:

/S/ Richard C. Bresnahan
Richard C. Bresnahan
Judge, division 18

Dated 11/30/2007

Cc: Terry Jones
Vincent Ventimglia

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

Filed Sept. 2 2008

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS, STATE OF MISSOURI

In re:
Circuit Court of St. Louis County

ADMINISTRATIVE ORDER

In the interest of the Circuit Court of St. Louis County, the Circuit Clerk's Office, and all employees of the courthouse, Vincent Ventimigla shall be escorted by security every time he enters the St. Louis County Courts Building.

Vincent Ventimiglia shall inform security of the purpose of his visit to the courts building. Security shall set a reasonable time limit for his legitimate business before he is granted access to the secured area of the courts building. Security shall escort him only if needs allow, and he shall be granted access only for the time he needs to be present for legitimate business.

This Order is effective immediately.

SO ORDERED:

/S/Carolyn C. Whittington
Carolyn C. Whittington
Presiding Judge, Division 7

Entered this 2nd day of September, 2008.

IN THE CIRCUIT COURT OF SAINT LOUIS
COUNTY STATE OF MISSOURI

VINCENT VENTIMIGLIA,	)	Dismissed:
DEBBIE VENTIMIGLIA,	)	6/11/2008
NICK VENTIMIGLIA,	)	7/10/2008
(a minor child), and,	)	
JOSEPH VENTIMIGLIA,	)	
(a minor child),	)	
	)	
Plaintiffs,	)	
	)	
	)	
-vs.-	)	Cause No.
	)	
	)	
ST. LOUIS C.O.G. INC.,	)	Jury Trial
	)	Requested
d/b/a Twin Rivers Worship Center, Inc.)		
T. BRYAN CUTSHALL,	)	
(Pastor and C.E.O.), and,	)	
NORMAN MCFALL,	)	
(Business Agent),	)	
AARON BUCK,	)	
(Video Specialist for T.R.W.C.), and	)	
TERRY L. JONES,	)	
(C.O.G. Inc., Attorney and Agent),	)	
	)	
Defendants.	)	

FIRST AMENDED PETITION FOR RECOVERY OF DAMAGES FOR MALICIOUS PROSECUTION AND, NEGLIGENT & INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; AND REQUEST FOR AN ISSUANCE OF A DECLARATORY JUDGMENT

Jurisdiction Statement

Comes now, plaintiffs, Vincent Ventimiglia, Debbie Ventimiglia, Nick Ventimiglia, (14 years old, a minor), and Joseph Ventimiglia, (12 years old, a minor), and do petition this court for relief through and, in accordance, with Missouri Rules of Civil Procedure 52.02(a); in that, Nick and Joseph Ventimiglia are minor children. Vincent Ventimiglia and Debbie Ventimiglia are their parents and are Nicholas and Joseph's legal guardians; Thus, satisfying the Fiduciary guides for minors prosecuting a claim, in this instant case before this court; and, Also, in accordance with Jurisdictional rules, in as, the claims by plaintiffs are Missouri State claims, wherein Missouri Tort Laws and Statutory Laws have been violated by defendants against plaintiffs, in St. Louis, Missouri, and all defendants live and work in this courts jurisdiction, where the crimes have been committed.

The time period for this Cause of Action started September 22, 2006. Plaintiffs case did accrue in Division 18, through October 17, 2007, tolling the time frame further, giving plaintiffs an adequate time frame of under two years from the initial occurrence of the crime, in filing for relief. This in conjunction with all of the above, gives jurisdiction to this court to process, hear, and try this petition.

I. CAUSE OF ACTION, ONE :
Malicious Prosecution
Elements of Malicious Prosecution
1. The Commencement of the prosecution;

Defendants filed T.R.O., Temporary Injunction, Permanent Injunction, was filed September 22, 2006, against plaintiff. SEE EXHIBIT C p.p. 1-9, C-AA,;

2. The case was instigated by defendants; Pastor Cutshall, Norman McFall, COG, Inc., Terry Jones, on September 22, 2006, did recklessly, with malice and afore-thought, did carry Mr. Ventimiglia into court and prosecute him with a frivolous and baseless suit. (Aaron Buck, Media Specialist, became involved later). SEE EXHIBIT C p.p. 1-9, C-AA,; 3. The termination of the case was in favor of the plaintiff; SEE EXHIBIT H[1],

Order by Judge Bresnahan dismissing case against Mr. Ventimiglia and awarding costs to Mr. Ventimiglia, on October 17, 2007;

4. The want of probable cause for the prosecution; Defendants had no valid evidence, but chose to rely upon perjury, manufactured evidence and altered evidence, behaving in a criminal manor, in prosecuting plaintiff, Mr. Ventimiglia.

Defendants did not believe their own story, they relied on intimidation, and criminal tactics to prosecute their case. That is why they were forced to withdraw and dismiss their own case. SEE EXHIBIT'S A-W, and D[1] - L[1].

5. The defendants conduct was actuated by malice; Defendants intentionally, planned the scheme against plaintiff, and did execute the malicious acts against plaintiffs outlined in this petition in the Circuit Court of St. Louis County, MO.; SEE EXHIBIT'S A-L[1].

6. Plaintiffs were damaged; Plaintiffs have suffered emotional distress, financial loses, business losses, ministry losses, relationship losses,
and other losses, because of defendants actions

against them; SEE EXHIBIT'S A-L[1].

II. CAUSE OF ACTION, TWO :

Negligent & Intentional Infliction of Emotional Distress

Elements of Negligent & Intentional Infliction of Emotional Distress:

1. Defendants intended to inflict emotional distress upon plaintiffs; Defendants did, conspire together and intended to inflict emotion distress upon plaintiffs when defendants acted separately or collectively and executing their plans, to wit;

A.) Attack and have others attack plaintiff, Mr. Ventimiglia, and his family;

B.) Recklessly tell lies about Mr. Ventimiglia and have others hate him;

C.) Libelously wrote over one thousand people and tried to convince them Mr. Ventimiglia had a mental problem, and was mentally distorted.

D.) Plan and execute modified and tampered with evidence, in trying to hide facts, that would show defendants guilt in these matters;

E.) Maliciously prosecute plaintiff Mr. Ventimiglia, wrongly; SEE EXHIBIT'S A-L[1]

2. The Conduct of Defendants was Extreme and Outrageous; Defendants conduct was extreme and outrageous because;

A.) Pastor Cutshall and defendants are supposed to be a pillar of truthfulness, love, patience, and honor in the office that they hold, but have stuped to barbarianism, deceit, and crimes against the state and plaintiffs, in a cold calculated, and malicious manor, shocking

the consciences of decent people, totally stepping outside the boundaries of anything, that would be considered, moral or decent, and they continue in trying to cover it up using up the exhausted patience of anything, or anyone, decent. Totally dishonoring themselves and all that contacted them in these matters. Notwithstanding, breaking Statutory Laws in their negligent, egregious trek against plaintiffs.

B.) Defendants caused the attack against Mr. Ventimiglia to go unchecked, but encouraged it by themselves and defamed and tarred and feathered, Mr. Ventimiglia with two to three hundred people in the presence of his minor child, in the middle of a church service, and then threw them out. Plaintiff, Mr. Ventimiglia is and was innocent of any charges by defendants. He and his family left peacefully. Just as they had entered, saying," God bless you," to them instead of cursing them, as pastor Cutshall, Norman McFall, Aaron Buck, and the whole church was doing to plaintiffs. It would shock the minds of decent people.

C.) Our good church people then, as if the tar and feathering wasn't enough, carried Mr. Ventimiglia into court with false evidence, perjury, edited DVD of the actual occurrence and tried to prosecute an innocent man, with a less than disingenuous attorney.(if you can't trust good church people, who can be trusted)? This is clearly an act that would cause decent people to be outraged and shocked.

D.) Defendants recklessly and maliciously caused severe damage to plaintiffs friends, family, business associates, ministry associates, and

Christian brothers and sisters, in banishing, censoring, and alienating plaintiffs from friends, and associates, and cost plaintiffs thousands of dollars, in an illegal and unethical manor. As outlined in this petition, before this honorable court when defendants criminally asserted an attack against plaintiffs and usurped the courts authority by filing a suit against Mr. Ventimiglia with criminal acts and intentions to further harm plaintiffs.

E.) Terry Jones, attorney for plaintiffs in Division 18, according to law, was bound to investigate, with due diligence, concerning the factual basis for any claim or defense, but chose rather to file a frivolous, malicious suit against plaintiff, Mr. Ventimiglia, and was beaten in his unscrupulous venture against plaintiffs. This was an outrageous and extreme form of malice, causing severe emotional distress to Mr. Ventimiglia and his, plaintiff, family. SEE: **EXHIBIT J[1] and A-L[1].**

3. **Actions of Defendants Caused Plaintiffs Emotional Stress**; Defendants did, in fact, cause severe emotional distress to plaintiffs when defendants did, to wit;

A.) Discriminating against plaintiffs by breaking Mo.R.S.352 Section 352.040(4);
Membership in such corporation shall be open to the public, under such reasonable rules and regulations as the corporation may describe in it's bylaws. *id.*

B.) Stripping Mr. Ventimiglia of all First Amendment Rights and censoring and banishing Mr. Ventimiglia, who is innocent of their malicious prosecuted false charges.

C.) Defendants violated Missouri Constitutional provisions, of Mr. Ventimiglia, Article 1, Section 6, where the Not-for-Profit Corporation is violating state laws and pastor Cutshall and company are not keeping their agreement with the state of Missouri in discriminating against Mr. Ventimiglia, by attacking him and his family and throwing them out of church, and by not being open to the public, but just for certain people. Showing clear discrimination and malice towards plaintiffs who are totally innocent. Violating Ultra Vire Regulations.

D.) Violating Missouri Constitution Article 1, Section 2, in that defendants are denying plaintiffs equality and equal rights, liberty, and the pursuit of happiness. Pastor Cutshall told Mr. Ventimiglia that he had no right to speak. Making Mr. Ventimiglia some subservient creature to himself and others there at the church. This caused plaintiff, Mr. Ventimiglia and his family severe Emotional Distress. **SEE: DVD OF SERVICE and polygraph test, Exhibit A.**

E.) Defendants did violate Mo.R.S. Chapters 575 Section 575.080, and 575.100, by Tampering with Evidence against plaintiff, and Filing a False Report, perjuring themselves, recklessly, in trying to harm plaintiffs, creating Emotional Distress upon plaintiffs.

F.) Defendants created Invasion of Privacy when they spread malicious lies about Mr. Ventimiglia being thrown out of churches and spreading lies about his conduct and behavior, and even mental state. Defendants spread private

issues about Mr.Ventimiglia and exaggerated the details in a false light. SEE: DVD OF SERVICE, and Exhibit X00052.

Summary of Facts

1. The Genesis of this case started approximately three or four years ago when plaintiffs starting attending St. Louis Church of God, d/b/a Twin Rivers Worship Center. (T.R.W.C). Plaintiff, Vincent Ventimiglia and his family did attend pretty regularly the Sunday services of T.R. W.C. at 10:30 a.m.. Mr. Ventimiglia had been a part of T.R.W.C.s " prison ministry team " for a number of years, and plaintiffs did support T.R.W.C. monetarily, even to the point of buying bibles for the prisoners, when T.R.W.C. refused proper supplies.

2. Mr. Ventimiglia started penning a manuscript of his life story and it did cause some alarm with the church folks. Mostly fear and paranoia and the spreading of malicious stories about plaintiff, Vincent Ventimiglia. Mr. Ventimiglia has had a very controversial background, more than twenty years ago.

3. Mr. Ventimiglia, after completing his first booklet, then started to write another book entitled, " The Fire of Truth." This book, or the first three chapters, seemed to cause a great disturbance in the ranks of the hierarchy at T.R.W.C.. It deals with subjects and doctrines of the church belief that seem to be lacking in today's modern day church. At least, in plaintiff's opinion. (*the doctrines are not in issue in this petition*).

4. Mr. Ventimiglia started hearing some things in the Sunday morning service that did not sound quite right to him and he started communicating

with senior pastor, Dr. T. Bryan Cutshall about the matters, privately, through the medium of emails, letters, and one meeting with him. In perfect accordance with Mr. Ventimiglia's First Amendment Rights to Free Speech, and Right to Association.

5. It seemed that the pastor had been betraying Mr. Ventimiglia's confidence and privacy by sharing and exaggerating stories about Mr. Ventimiglia, such as, Mr. Ventimiglia had been stalking his house and family and threatening them, and other malicious, untrue, reckless slander focused directly at Mr. Ventimiglia.

6. Mr. Ventimiglia and his family started to notice people, friends, business associates, and ministries associates being unfriendly to himself and his family over the course of many months.

7. Even the pastor, and Mr. McFall, when Mr. Ventimiglia would see them in the church, would have the look of fear and worry in their faces. Others would start to be very unfriendly and even rude to Mr. Ventimiglia and his family. This was causing Mr. Ventimiglia concern and Mr. Ventimiglia started to investigate.

8. Mr. Ventimiglia learned that the pastor and others were spreading malicious lies about Mr. Ventimiglia, causing people to actually hate him and his family.

9. One morning on September 17, 2006, Mr. Ventimiglia and his children were attending a service at T.R.W.C. and during the service the pastor singled Mr. Ventimiglia out and attacked him and told everyone in the service, (about two or three hundred), that Mr. Ventimiglia was a wolf and devil and they did not want Mr. Ventimiglia to come back to the church. Pastor Cutshall rallied the congregation against Mr.

Ventimiglia in an egregious manor. The attack would shock the conscience of an ordinary person.

10. The congregation was screaming at Mr. Ventimiglia and his family and calling him very provocative and degrading names in front of his family there with him, and humiliating, and defaming, Mr. Ventimiglia and his 13 year old minor.

11. Mr. Ventimiglia did stand and call the pastor a liar, in defense of his honor and for the sake of the truth. (*Mr. Ventimiglia was wearing a shirt with a Christian bible verse, or logo, on it. This is a customary thing to do, and Mr. Ventimiglia has worn other shirts with logos into the church before and was never attacked because of it).*

12. There was security positioned around Mr. Ventimiglia, as was the practice of T.R.W.C. for no apparent reason, unless they knew the pastor was going to attack Mr. Ventimiglia that morning.

13. Mr. Ventimiglia also said, " God bless you," to them instead of screaming like they were screaming. Mr. Ventimiglia was peaceful and left peacefully and respectfully with his family, without incident. SEE: EXHIBITS K[1]-L[1].

14. After reviewing the DVD made of the service in question, Mr. Ventimiglia heard the pastor tell the congregation that Mr. Ventimiglia had been thrown out of other churches and that he had been doing harmful things to the staff at T.R.W.C.. This is a total misguided exaggerated fabrication of anything that could be close to the truth. Unfortunately, pastor Cutshall is a big liar and trouble maker causing all of the damage to fall upon plaintiffs.

15. These statements by pastor Cutshall are completely false and pastor Cutshall continued slandering and defaming Mr. Ventimiglia with reckless disregard

and malice. Pastor Cutshall even stripped Mr. Ventimiglia of any rights, by saying that, while the pastor was dehumanizing Mr. Ventimiglia, that Mr. Ventimiglia had no right to speak, or even defend himself under such an unwarranted, and malicious attack. This is totally against Mr. Ventimiglia's Constitutional Rights to Free Spe-ech, Right to Association, Right to Assemble and Worship Freely without the threat of being attacked. This pastor Cutshall was acting totally Barbaric, being totally outrageous, and egregious in nature.

16. After the " tar and feathering " of Mr. Ventimiglia and his family, pastor Cutshall then, wrote a letter to the congregation trying to further convince the rest of the congregation, and to further cement the damage done to Mr. Ventimiglia and his family, by telling over one thousand people in the letter, that Mr. Ventimiglia was actually, in so many words, crazy and needed help for his mental state. Which is totally false. SEE: EXHIBIT X00052.

17. Then, as if there had not been enough damage done to plaintiffs, Pastor Cutshall,

Business Agent, Norman McFall, COG. INC., and Terry Jones, Attorney for COG INC., take a false affidavit, signed by Norman McFall, but prepared by Terry Jones, into the Circuit Court of St. Louis County and prosecute Mr. Ventimiglia with false evidence in trying to restrain Mr. Ventimiglia, because defendants feared retaliation for their evil works against plaintiffs. These actions would surely shock the conscience of decent people. Some men would have reacted violently to an attack against their children, such as the " fine church folk" committed against plaintiffs, but Mr. Ventimiglia, being a Christian, and setting an example, blessed them anyway.

18. Pastor Cutshall then had all the elders of the church contact every member of the church and convinced them to not communicate with Mr. Ventimiglia, in that they convinced the members that Mr. Ventimiglia was evil and was trying to harm the pastor, his wife and family, and the whole church, for that matter. Which was, and is, not true.

19. Through those deeds of pastor Cutshall and the staff, Mr. Ventimiglia has been alienated and banished from friends, business associates, ministry associates, and potential future associates of a positive nature, in a most offensive attack against himself and his family. Totally against any theory of law that protects U.S citizens from such attacks by people, to say the least, from supposed, good church folks.

20. Mr. Ventimiglia, did call for a mediation meeting in trying to act like a Christian and talk some sense into all of the defendants by trying to convince them that their illegal and unethical plight against himself and his family would lead them into further serious trouble. Not to mention it was as anti-Christian as it gets, so to speak. The pleading went of deaf ears and the defendants continued their rampage against Mr. Ventimiglia in the court of law with false evidence.

21. The pastor, Norman McFall, COG, INC., and Terry Jones attorney, then entered a manufactured, edited version DVD of the Sunday service into evidence, through discovery in the Circuit Court in Division 18, Judge Bresnahan. Case No. 06CC-3797.

22. Pastor Cutshall, Norman McFall, Terry Jones, and COG INC., deny the DVD was edited. They, with Aaron Buck, Media Director, did cut out the egregious attack by the pastor and congregation. There was still

traces of the editing, even to the naked eye. SEE EXHIBIT C, (L), p.p. 64-65, (Affidavit of Nick Frolos).

23. Mr. Ventimiglia, then hired an expert witness, Nick Frolos, Media Images, to analyze the DVD for authenticity, to show positively that the DVD had in fact been edited as Mr. Ventimiglia had claimed.

24. This shows more malice and reckless disregard toward Mr. Ventimiglia and a very high degree of disrespect for this court in the " players " or defendants, cavalier attitude in perpetrating wrongs, with no restraint, against Mr. Ventimiglia, his family, the church body, and this court.

25. Mr. Ventimiglia is a convicted felon of yesteryear and defendants have used Mr. Ventimiglia's past in order to try to intimidate him into submission by their unwarranted attack against him and his family and even the community at large and this is a crime.

26. Never has defendants made mention of Mr. Ventimilia's accomplishments, which are monumentous over the past twenty years, leaving people to think the very least and most harmful scenario against Mr. Ventimiglia and his family. This was prepplanned and orchestrated, and then executed against Mr. Ventimiglia and his family, and the community at large, causing irreparable harm to plaintiffs by defendants, malicious acts against them and the total invasion of privacy by defendants. Causing great harm to plaintiffs by their unlawful deeds.

27. Terry Jones, in letters to Mr. Ventimiglia tried further intimidation techniques in trying to intimidate Mr. Ventimiglia by saying things like, " we will put you on the stand and expose your past, and no one will believe you." (plaintiff still has a

complete file).

28. Plaintiff was and is a " pro se " litigant and the defendants, in their professional roles have been trying to take advantage of Mr. Ventimiglia in a most unethical manor, to say the least. **SEE EXHI-BIT I' (letter from Terry Jones to Mr. Ventimiglia threatening him, as Mr. Jones had been, about his past record).**

29. Since Mr. Ventimiglia could not be intimidated by defendants, they were forced to withdraw their case against Mr. Ventimilgia in fear of their lies and schemes being unveiled by a trial.

30. Mr. Ventimiglia then filed another counterclaim to try to clear his name from the damage done to plaintiff, but judge Bresnahan would not allow a counterclaim.

31. Mr. Ventimiglia tried to file a counterclaim more than once only to be denied any fairness from judge Bresnahan. **SEE EXHIBIT C, (J) p.p. 49-58, (Omitted Counterclaim...) EXHIBIT C, (K) p.p. 59-63 (Motion for Sanctions Against Mr. Jones), and E, p.p. 19-25,(judgment of the pleading), and J.**

32. Mr. Ventimiglia did file in the appeals Court a Petition for Mandamus and Prohibition and appeal-ed it to the Mo.S.Ct. only to be denied, but upon a request to judge Bresnahan for a stay to petition the U.S.Supreme Ct., judge Bresnahan allowed the defendants to withdraw their case and awarded Mr. Ventimiglia costs. Mr. Ventimiglia did prevail against defendants malicious, continued attack against himself. There was a case of precedence, **Mark Perkel** in Missouri that had the same elements as Mr. Ventimiglia's case and the U.S. Supreme Ct. granted Mark Perkel relief. Plaintiff, Mr. Ventimiglia

believes that the court knew Mr. Ventimiglia would receive relief from the U.S. Supreme Ct. and that is why defendants and Judge Bresnahan dismissed the case immediately. **SEE; EXHIBIT C, (AA) p.p. 1-10, (Petition for Mandamus... Prohibition....**

33. Mr. Ventimiglia also filed for Removal to Federal Court because of the prejudice of Judge Bresnahan and the misconduct of Terry Jones, but Judge Jackson denied the removal.

34. At almost the same hour as Judge Jackson's denial of plaintiff's petition for removal, Judge Bresnahan, very quickly dismissed defendant's case against Mr. Ventimiglia.

35. Mr. Ventimiglia did at one time file a law suit against defendants concerning the matter at hand, to be dismissed, without prejudice, by Judge Whittington. And plaintiff did appeal the dismissal.

36. Plaintiff, Mr. Ventimiglia, did file a motion to withdraw his appeal, due to the fact that plaintiff wanted to exhaust remedies in Judge Bresnahan's court and then pursue remedies such as this petition in this court. Plaintiff did prevail and did exhaust all remedies in Judge Bresnahan's court. **SEE EXHIBIT D[1], (Mr. Ventimiglia's Motion Withdrawing Appeal).**

37. Defendants have not produced one ounce of evidence that is credible, in their onslaught against plaintiffs and are still denying plaintiff first amendment rights and are in complete violation of the not-for- profit status with the State of Missouri by not being open to the public and unlawfully attacking, discriminating, and causing intentional emotional distress to plaintiffs by trying to continue to bar Mr. Ventimiglia away from T.R.W.C. in an illegal and egregious manor causing many unconstitutional burdens upon plaintiffs, as well as heavy monetary

losses, when in fact, Mr. Ventimiglia is innocent of any and all charges made by defendants against himself. Literally, defendants are trying to " muzzle " Mr. Ventimiglia and keep him from criticizing pastor Cutshall's false teachings, in some areas. And defendants filed suit against plaintiff to try to intimidate him into submission. Violating plaintiff's First Amendment. SEE: EXHIBITS K[1]-L[1].

38. Plaintiff did in fact, hire a professional polygraph examiner to examine Mr. Ventimiglia to show the truth about the incidents in question. BOYD POLYGRAPH SERVICE. SEE EHIBIT A, (Polygraph Report).

39. Even though polygraph tests are not, usually, admissible evidence, this shows the extreme emotional distress of Mr. Ventimiglia according to the polygraph analyst that was caused by pastor Cutshall and the wrongs done by him to plaintiff, Mr. Ventimiglia.

40. Pastor Cutshall did verbally tell Mr. Ventimiglia, in the presence of the mediator, after mediation was complete, that Mr. Jones just put the information in the affidavit that was used in the court against Mr. Ventimiglia. This shows that every party on pastor Cutshall's team, Norman McFall, COG Inc., and Terry Jones, himself, knew the evidence was false when they procured the court into issuing a bogus restraint against Mr. Ventimiglia. SEE AFFIDAVIT OF NORMAN MCFALL, EXHIBIT C, (D) p.p. 16-18.

41. Every claim made by defendants in the case in Division 18 on the T.R.O. etc., have been proven to be false, even before the trial, through discovery and other methods. This is why defendants were forced to dismiss their own case, when all else failed them.

42. Plaintiff did file with the court in Division 18 a

Bill of Costs totaling about $34,250.00. SEE EXHIBIT B (Motion for Costs). Judge Bresnahan awarded Mr. Ventimiglia a mere $180.00. Mr. Ventimiglia had filed numerous motions, affidavits, had motion hearing days to the point that judge Bresnahan would not allow any more motion hearing days for Mr. Ventimiglia, even over Mr. Ventimiglia's objections. That is when Mr. Ventimiglia went outside the court for further relief according to law, and that's when defendants and Judge Bresnahan dismisssed the case against plaintiff. Leaving plaintiff to further suffer the burden of the remaining costs, and further being denied any fairness and equal protection guaranteed by the law of the land, by not being allowed to file a counterclaim, at that time. This was a clear violation of Mo.R.C.P.. SEE EXHIBIT E[1] (Writ of Removal to Federal Court). This causing more intentional emotional distress, by the malicious, reckless, and premeditated malicious actions of defendants against plaintiffs. (please note also, that Judge Bresnahan refused to record any hearings in order to conceal the prejudice and biased treatment to Mr. Ventimiglia, even after many requests to have the hearings recorded). SEE EXHIBIT C.

43. The T.R.O., Preliminary Injunction, and Permanent Injunction case against plaintiff continued for an unprecedented length of time of over a year with many court appearances, where plaintiff hired expert witnesses, legal help, a polygraph expert, and other expenditures in defending himself against the vicious attack against himself, his family, and the community at large.

44. Terry Jones attorney for defendants did counsel Mr. Ventimiglia in a side room at the first hearing for the T.R.O. to sign the court document and

that would secure a mediation meeting. Little did Mr. Ventimiglia know he was agreeing to the preliminary injunction. Terry Jones did in fact mislead Mr. Ventimiglia into believing it was a necessity to have the mediation; Notwithstanding, if Mr. Ventimiglia did not sign the document, the case would have been over, due to lack of evidence of any continuation of their false claims. Mr. Jones did trick plaintiff with another trick. Mr. Jones told Mr. Ventimiglia, " I can't chew bubble gum and cross the street at the same time." when in fact, Mr. Jones was up to old tricks again in taking advantage of Mr. Ventimilia's lack of knowledge of the T.R.O. procedures, at that time. PLEASE SEE EXHIBIT C. (*This is a copy of plaintiff's Writ of Mandamus and in the Alternate, a Writ of Prohibition. plaintiff does at this time incorporate the complete file and exhibits into this petition).*

45. In spite of Mr. Jones' trickery against Mr. Ventimiglia, Mr. Ventimiglia was in the pursuit of the truth being told and his name being cleared. Mr. Ventimiglia at all times sought a jury trial for the clearing of his name and the truth be shown of defendants malicious and reckless acts against himself and his family. SEE; EXHIBITS F[1] (Leave to file Counterclaim...), & G[1] (Motion for Jury Trial).

Statement of Facts About Mr. Terry Jones

1. Plaintiff does incorporate into this Statement of Facts About Mr. Jones the allegations and facts contained in lines one (1) through forty five (45),

above, and does restate them in this section; and also,
2. Mr. Jones alone is in violation of Missouri Supreme Court Rule 4-3.3. (a); A lawyer shall knowingly: (1) make a false statement of material fact; and (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of it's falsity, the lawyer shall take reasonable remedial measures; (Mr. Jones and defendants knew the affidavit was false, Pastor Cutshall told plaintiff that " *he, Mr. Jones just put that stuff in there.*" Pastor Cutshall was making an excuse for Norman McFall when Mr. Ventimiglia accused Mr. McFall of creating the lies in the affidavit. **Therefore according to Pastor Cutshall and the record, Terry Jones is guilty of subverting justice and creating multiple offenses that are outlined herein.**

(*please note, that in the whole time the case was pending in Division 18, there is NO denial of these facts presented by Mr. Ventimiglia). (Pastor Cutshall has not made any sworn affidavit denying this charge against Terry Jones, or for that matter no one has). Mr. Jones also created multiple " Conflicts of Interests."*

(c) a lawyer may refuse to offer evidence that the lawyer reasonably believes to be false. Rule 4-3.7. (a) : a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a witness. (Mr. Jones had become a witness for the plaintiffs more than once on issues where Mr. Jones should have investigated and found the evidence to be false, therefore Mr. Jones should have withdrew or reported it to the court, instead of continuing the harassment against

plaintiff in a malicious fashion, with defendants). SEE EXHIBIT C, with all exhibits A - L[1].

3. Mr. Jones violated Mo.S.Ct. Rule 4-3.5.(c), by engaging in conduct intended to disrupt tribunal; and, Rule 4-3.4.(a), a lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law; (d), in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to com·ply with legally proper discovery request by opposing party; (please note, *Mr. Jones and defendants have abused the courts in the discovery process in that, Mr. Ventimiglia requested over and over, the seventeen letters (17) that congregants wrote to pastor Cutshall after the attack upon plaintiffs and the judge ordered Mr. Jones to hand them over. The judge was going to review them in camera, but Mr. Jones and Judge Bresnahan refused, after many prompting by Mr. Ventimiglia, but Mr. Jones refused to hand them over. Instead he filed a motion to dismiss and get out from under the gun, if you will. These letters would undoubtedly prove Mr. Ventimiglia's case and show the reprehensible behavior of defendants in that case).* Also Mr. Jones used " red herring " tactics repeatedly in trying to thwart Mr. Ventimiglia's whole court process. SEE EXHIBIT C, with all exhibits A - L[1]. Mr. Terry Jones is guilty of withholding exculpatory evidence, but he dismissed the case to try to further hide the truth.

4. With the above information and the record at

hand, Mr. Jones is in the very least, guilty of conspiracy with defendants in planning and carrying out the MALICIOUS PROSECUTION against plaintiffs and causing GREAT INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS to plaintiffs, as well as, multiple violations of Missouri Supreme Court Rules and this court should, in the very least, sanction Mr. Jones and report his behavior to the Office of the Chief Disciplinary Board in Jefferson City, Mo. And award plaintiffs monetary damages from Mr. Jones in punitive damages, and/or whatever law and equity, and this court allows as fitting the crimes committed by Mr. Jones with defendants in this case.

5. Terry Jones did violate essential Rules in where he was to investigate the claims by his clients, in that, " an attorney must perform a due diligence investigation concerning the factual basis for any claim of defense." Terry Jones, according to pastor Cutshall, did make up the affidavit with perjurous testimony for Norman McFall to sign and then proceeded into court with it and maliciously prosecuted Mr. Ventimiglia with it for over a year. This caused plaintiffs great emotional distress.

Statement of Facts About Dr. T. Bryan Cutshall, Senior Pastor, T.R.W.C., Norman McFall, Business Agent, COG.Inc., and Aaron Buck, Media Director for T.R.W.C.

Plaintiff does restate and incorporates the allegations in the above averments # 1 through # 45 into this section of the pleadings and does continue below, to wit;

1. Dr. T. Bryan Cutshall, Senior Pastor, T.R.W.C. Norman McFall, Business Agent, COG, Inc. Pare-

nt Corporation, and Aaron Buck, Director of Media, did in fact:

A.) Verbally attack plaintiff in the presence of his minor child and had hundreds of people screaming at Mr. Ventimiglia, calling him horrible names;

B.) Then when Mr. Ventimiglia tried to defend himself by calling the pastor a liar, pastor Cutshall had Mr. Ventimiglia and his two minor children thrown out of the church building, while hundreds of people were still screaming at them;

C.) Then pastor Cutshall continued slandering and defaming Mr. Ventimiglia to the congregation by telling them lies, such as, Mr. Ventimiglia had been thrown out of other churches before, and that Mr. Ventimiglia had been trying to harm other people in the church;

D.) Then pastor Cutshall wrote a slanderous and libelous letter to the whole congregation of over one thousand (1,000), people telling them more untruths about Mr. Ventimiglia being very confused and that Mr. Ventimiglia needed help, insinuating mental help. Pastor Cutshall Breached plaintiff's Confidence and Privacy, in violation of Missouri Tort Law, by exposing private communications and recklessly adding lies to them to infuriate others against Mr. Ventimiglia, in a malicious, defaming manor.; **SEE: EXHIBIT C, Exhibit Package p. X00052.**

E.) Pastor Cutshall, after the attack in the church, after Mr. Ventimiglia and his sons were ejected, pastor Cutshall made circling motions around his ear with his finger. Indicating to the congregation that Mr. Ventimiglia was crazy, indeed, triggering reckless disregard, and malicious actions towards Mr. Ventimiglia.

F.) Pastor Cutshall did, with COG Inc.,

Norman McFall, and Terry Jones carry Mr. Ventimiglia into the St. Louis County Circuit Court, in Clayton, Missouri and filed a bogus suit against Mr. Venimiglia in the form of a Temporary Restraining, Temporary Injunction, and Permanent Injunction with a false affidavit, filled with inconsistencies and perjury. **SEE EXHIBIT C, (A) p.p. 1-9 (T.R.O.) and (D) p.p. 16-18 (Affidavit of Norman McFall). Causing Malicious Prosecution and Intentional Infliction of Emotional Distress to plaintiffs in a Reckless Fashion.**

2. A.) COG, Inc., Parent Corporation, did conspire with defendants to enter false evidence and encouraged perjury, by not training it's employees properly and allowing them to perpetrate crimes and not be corrected, but COG, Inc. became an accomplice in the crimes against plaintiffs. COG, Inc. is guilty under the terms of " Vicarious Liability and Employer Liability " as well. SEE; EXHIBIT C, (A), 1-9. Causing Malicious Prosecution and Intentional Infliction of Emotional Distress to plaintiffs.

B.) Defendants have committed " *Ultra Vires* " in that, they have completely withdrawn from their commitment with the State of Missouri's Corporation Laws, and Missouri Revised Statutes Chapter 352 Section 352.040 (4), and Chapter 575 Section 575.100, (tampering with evidence), and T.R.W.C., and COG, Inc.'s own bylaws (A) PURPOSES; Sections 1,2,3,4, and 5, by attacking plaintiffs in the church, for no reason other than the pastor's egotistical behavior and hatred for plaintiff, Mr. Ventimiglia; Then defendants conspired to cover it up, by maliciously prosecuting Mr. Ventimiglia, and tried to continue to intimidate and use illegal practices against plaintiffs. SEE: EXHIBIT C,

Exhibit Packet X000002.

3. Aaron Buck, Media Director, did edit, personally, or participate in the editing, or had knowledge of the editing of the DVD of the September 17th, 2006, 10:30 a.m. service from showing the actual complete attack by Pastor Cutshall. Aaron Buck showed up at the first court hearing to testify that the DVD, in question was authentic.(this was before plaintiff had the DVD analyzed by an expert to find out, for the court, that it was edited from the original version).

With these actions by Aaron Buck, he becomes an accomplice in the crimes of the other defendants. SEE: EXHIBIT A, and L p.p. 64-65. Causing Malicious Prosecution and Intentional Infliction of Emotional Distress to plaintiffs.

Declaratory Judgment

1. Plaintiffs request that this court issue a Declaratory Judgment in accordance with Mo.R.C.P. 87.02 (a)(c), with respect to plaintiffs rights, status, and other legal relations in plaintiffs rights to return, in the future, if plaintiffs choose, to T.R.W.C. and freely worship, assemble, and not be attacked by defendants, as defendants have in the past.

2. Defendants, through their attorney, have barred Mr. Ventimiglia from entering the property at T.R.W.C., or contact any staff from there.(plaintiff has numerous friends at T.R.W.C. as well as, business associates, and ministry associates).

3. Mr. Ventimiglia and his family have been attacked and denied freedoms of the U.S. Constitution that guarantee the restrictions that defendants are forcing upon Plaintiff, Mr. Ventimiglia and his

family, such as banishing plaintiffs from T.R.W.C. and maliciously prosecuting Mr. Ventimiglia, and then denying Mr. Ventimiglia freedoms that others freely enjoy in pursuing happiness and liberty.

4. Defendants are also trying to muzzle Mr. Ventimiglia's free speech because defendants don't care for him. Mr. Ventimiglia has broken NO laws, contrary to defendant's criminal behavior, as outlined herein this suit.

5. Plaintiffs would ask this court to admonish defendants and order them to stop infringing on Mr. Ventimiglia's Constitutional Rights outlined, herein, in this suit and to stop discriminating against him and his family, as is outlined herein, in this suit.

Order defendants to obey the state regulations governing Not-for-Profit entities and State, and Federal Laws in not discriminating against plaintiffs.

Prayer and Damages

1. Plaintiffs have been damaged, and would move this court to grant the remaining balance of costs and expenses from Division 18, where plaintiffs defeated defendants in the Malicious Prosecution. This total was $34,250.00, and costs and expenses in this stage of the case; **SEE: EXHIBIT B, (Bill of Costs Motion)**.

This would be damages in respect to Compensatory Damages, and legal costs in the amount of $34,250.00.

2. Plaintiffs would ask this court to order Pastor Cutshall to address the congregation once again, and correct the injustice done against plaintiff, Vincent Ventimiglia, by apologizing to the congregation for

the unlawful, untruthful, malicious, reckless, intentional, and evil attack against plaintiff and his family, that caused plaintiffs to suffer emotional pain, suffering, loss of amenities, loss of companionship, loss of consortium, loss of reputation, impairment of mental capacity, loss of enjoyment of life, and for the fright, shock, grief, anxiety, shame, anguish, humiliation, severe disappointment, indignation, wounded pride, stress, and depression, endured by plaintiffs; And have pastor Cutshall and defendants, do this with plaintiffs present, especially the minor children of plaintiffs, Joseph and Nick. This would be in the form of General Damages caused by the Negligent and Intentional, violations outlined in this petition against plaintiffs.

3. Order Pastor Cutshall write the rest of the congregation, as he did before when he recklessly murdered Mr. Ventimiglia, but this time, pastor Cutshall will be correcting the, malicious, negligent, and intentional harm, wrongs, grief, wounded pride, humiliation, anguish, shock, loss of enjoyment of life, loss of liberties and freedoms, shame, loss of reputation, loss of companionship, etc., done by his, and defendant's reckless, and negligent, intentional wrong, attack to plaintiff in his reckless, and malicious fashion as he did in. **Exhibit Package X00052**;

4. Order defendants contribute $ 25,000.00 from each defendant, or collectively, to Friend to Friend Ministries Inc. (Not-for-Profit Corporation # N00869 486) for use to help ex-offenders to rehabilitate themselves. This would cover Compensatory, and Punitive Damages against Mr. Ventimiglia, for the damage done to him by defendants, outrageous, malicious, and reckless, negligent, intentional, humiliating, priding wounding, anxiety causing, angu-

ishing, despairing, depressing, frightening, shocking, grievous, raging, and shameful inflictions of emotional distress cast upon Mr. Ventimiglia, and for the suffering he has endured due to the fact that his family was part of the onslaught of defendants.

5. Give $25.000.00 each to Joseph and Nick Ventimiglia in a college fund deposit. This would be $25.000.00 from each defendant, or collectively, for Compensatory & Punitive Damages due to the outrageous conduct of defendants against there father, which naturally caused, severe emotional distress. Also, the children suffered depression, loss of companionship, anxiety, severe disappointment, fright, humiliation, despair, because of defendants actions against plaintiffs, it banished, alienated, and censored plaintiffs away from all of the members of the church, where over 1,500 members associate, fellowship, and worship together. Also the indignation went as far as into the community, at large.

The children would be compensated for their part of the damage with $125.000.00 each. It will deposited for future college funding.

6. Give $25.000.00 from each defendant, or collectively, to Debbie Ventimiglia for Compensatory and Punitive Damages to herself for the dramatic Infringement and Negligent & Intentional Infliction of Emotional Distress upon herself by the acts of defendants, by their outrageous, malicious, and reckless conduct against herself, her husband, and her minor children, and the church, the community, and this court;

7. Mr. Ventimiglia asks nothing for himself, but for the costs of this second litigation, Mr. Ventimiglia asks for $20,000.00, also to be deposited into the Friend to Friend Prison Ministry that Mr. Ventmiglia

founded; also, give from each defendant, or collectively, 10,000.00 each, or collectively, to compensate for the business losses, caused by the damage done to Mr. Ventimiglia's business in the church and the community.

8. Order the Circuit Attorney to investigate the defendants behavior and file charges for the legal crimes committed by defendants, including Mr. Jones;

9. Notify the Office of Chief Disciplinary Counsel about Mr. Terry Jones unethical behavior identified in the evidence in this case, and make a recommendation on his behavior in this case and the previous one in Division 18, in accordance with Code of Judicial Conduct, Cannon 3B(3); (a judge should report unethical behavior of the lawyer to the proper authorities).

10. Grant jury trial;

11. Issue a Declaratory Judgment, as requested above.

12. Or/and whatever law and equity demand in this cause.

Respectfully submitted,

/s/Vincent Ventimiglia
Vincent Ventimiglia, pro se
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/d/ Debbie Ventimiglia
Debbie Ventimiglia, plaintiff

CERTIFICATION OF SERVICE

Comes now the undersigned and does hereby certify that a true copy of the foregoing has been sent first class mail, postage prepaid, this 9th day of May, 2008, to:

Russell Waters
1010 Market St.
Suite 2000
Saint Louis, MO. 63101

Daniel Tobben
150 N. Meramec
4th floor
Clayton, MO. 63105

Respectfully submitted,

/s/Vincent Ventimiglia
Vincent Ventimiglia, pro se

IN THE CIRCUIT COURT OF
ST. LOUIS COUNTY
STATE OF MISSOURI

VINCENT VENTIMIGLA, et al., Plaintiffs,	)	
Vs.	)	No. 08SLCC790
ST. LOUIS C.O.G., INC., d/b/a Defendants,	)	

TRANSCRIPT ON APPEAL
JULY 10, 2008

MR. VINCENT VENTIMIGLIA
5817 Runnymede Place
Imperial, MO. 63052
Pro se, on behalf of the plaintiff

MR. DANIEL TOBBEN
Danna McKitrick, PC
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On behalf of Terry Jones, Co- defendant

Ms. JENNINE ADAMEK MOORE
Brown and James, PC
1010 Market St., 20t floor
St. Louis, MO. 63101
On behalf of Defendant St. Louis C.O.G., Inc., et al.

JENNIFER A DUNN, RPR, CCR, #485
OFFICIAL COURT REPORTER
ST. LOUIS COUNTY CIRCUIT COURT
21ST JUDICIAL CIRCUIT

(The following proceedings were had in open court:)

MR. VENTIMGLIA: I'd like to make an objection. My name is Vincent Ventimiglia, and I'm a plaintiff in this case pro se representing plaintiffs Debbie, Nicholas, and Joseph Ventimiglia. And I'd like to make an objection. The first objection--

THE COURT: I'm sorry, objecting to what?

MR. VENTIMIGLIA: That this court has no jurisdiction, your Honor.

THE COURT: Oh, okay.

MR. VENTIMIGLIA: The court has no jurisdiction because the Court has granted plaintiff's first amended petition on May 9th, and in Division 10 on April 30, Judge Jamison issued and order granting an amended petition by interlination, and judge Jamison also granted plaintiff Vincent Ventimiglia guardianship over Nicholas and Joseph Ventimiglia.

I have here as Exhibit A and exhibit B that I'd like to enter to the Court on the record, a certified copy of the orders of you yourself and Judge Jamison's orders as Exhibit B, there's five of them, one through five, and I'd also like to offer on the record a certified copy of the docket of the circuit clerk upstairs, showing there's 86 entries on here and showing that amended petitions granted by yourself and judge Jamison.

And I'd also like to object to the filings and pleadings of defense attorneys because they are moot. When this Court grants plaintiffs first amended rights and when judge Jamison in Division 10

grants plaintiff's first amended rights, the previous pleadings become moot.

And Id also like to make an oral motion at this time for default against these attorneys because They have not responded to the first amended complaints within 30 days. They have not filed a motion according to Rule 74, if there was clerical mistakes or any other mistakes in order to bring it to the Court's attention and to have filings entered properly on the record.

So, therefore, these proceedings are moot. Their pleadings are moot, and this court has no jurisdiction to hear them.

I'd also like to make an objection, your Honor, I had over ten motions noticed up on June 11, in this court, and this court refused to allow me to present them to the Court, and I would like to incorporate them into the record at this time for appellate purposes if we need to go to the appeals Court.

I'd also like to make an objection, your Honor, according to the motion for reconsideration and the supplemental motion, and the memorandum as well, about the defense attorney's pleading or responses to the pleadings. They are totally unauthenticated. They have not--they have no authority, they have not responded to the averments according to Missouri rules of Civil Procedure, taking each averment and addressing it in order. They totally went off the record, incorporated facts and stories into the record that are not in the pleadings of plaintiffs and, therefore, they must be rejected according to rules and laws of the Court.

Also, your Honor, I did make the oral motion for default, and I did offer the proof of the certified records from the Circuit Clerk's office and your

orders and judge Jamison's orders, defendant's attorneys are trying to reframe plaintiff's pleadings, your honor, and it's violated Missouri Supreme Court Rules, it's unethical to do that.

I have notified attorneys on the record with e-mails to Mrs. Moore an Mr. Tobben here of Danna McKitrick, two months ago to correct the pleadings. I have filed motions for sanctions and they're pending Before this court, and they need to be heard and the court needs to rule on them.

I'd like to make an objection because I have been denied due process according to the Fourteenth Amendment. The motion hearing day of June 11th wasn't recorded according to Revised Statute of Missouri 485.050.

The judge dismissed with the written orders by the defense attorney, I as not allowed to incorporate any of my pleadings in there. I'd also like to object that the judge, you, Judge Kintz, did not give facts and findings and conclusions of law, but rather dismisssed the case. A perfectly good case substantiated by over 40 pieces of evidence with prejudice, not even considering the minor children, the elements of the case, the facts, did not read the case from all four corners, did not give plaintiffs a liberal review, and this Court did say that you read the case, and I'd like to object. If you did read the case, you would have seen, you yourself would have issued an order granting a first amended complaint, and judge Jamison granted an order giving us first amended petition.

I'd like to object that you held petitioners to heightened standards in violation of clear established law. I'd to like to object because the court accepted the defendant's attorney's frivolous pleadings without considering plaintiff's actual facts.

And I'd like to object because the Court does not have jurisdiction and it did not have jurisdiction on June 11th when you dismissed plaintiff's case with prejudice.

I'd like to object because the court sustained moot motions dismissing plaintiff's claims without jurisdiction.

And, for the record, you, being the judge, lost immunity by not having jurisdiction and ruling on mooted motions and dismissing plaintiff's claims according to law.

And this Court refused, I'd like to object, because this Court refused to hear the motions for sanctions and allowing the behavior of the defense attorneys to go on and continue harming and damaging plaintiffs more than they've been damaged before, therefore, possibly coming into conspirator in their plot against plaintiffs.

And I'd also like to object, your honor, about the clerk. The clerk's duty is to send the orders that you yourself sign and give to all parties in the case, and the clerk never did or never sent them to me, or we would have known and we could have saved a whole bunch of rehashing of these motions in pleading before the court.

I have been to the appeals Court on two mandamuses since that, cost me a lot of money, and I'd like to incorporate them into the file at this time for appellate purposes. As a matter of fact, I'd like to incorporate the whole record into the file at this time.

Mr. Tobben today handed me, and I'd like to make an objection, hand me a memorandum that he filed with the Court yesterday, it is not timely, not to mention it is moot, and this Court has no jurisdiction to hear it, but I'd like to make on the record, a

continuation of his behavior. He has been a lawyer for thirty years, he knows the rules and laws, and he is continually trying to oppress this court and oppress plaintiff with his frivolous findings. And with that, I'll close for now, your Honor.

THE COURT: I have to respond to one thing First before I let the attorneys respond. My recollection on June 10th, you were given a copy of the order, wasn't that correct?

MR. VENTIMIGLIA: I was given a copy of the order. I refused to sign it.

THE COURT: You answered my question. You wee given a copy of the order. You understand when you're given a copy of the order, we don't send you a copy.

MR. VENTMIGLIA: I'm not talking about that order, your Honor. I'm talking about the order when you granted first amended petition, they were never sent out, we don't know that.

THE COURT: We don't forward those out to you sir.

MR. VENTIMIGLIA: Well according to the rules of the court and the clerical duties, I just read that, and I can get you a copy of it. It's the clerk's duty to make sure they go to all parties. How can we know?

THE COURT: Any response?

MR. TOBBEN: Yes, Your Honor, I'd like to

just briefly respond. First of all, for the record, I think since the Court has been attacked, I think the Court has shown great restraint in dealing with Mr. Ventimiglia.

MR. VENTIMIGLIA: Objection.

THE COURT: Sir.

MR. TOBBEN: This is Mr. Ventimilia's fifth bite at the apple. We argued before judge Jamison and felt Judge Jamison was unfair to him and took a change of judge. He's been to the Court of appeals, you once before, and back again.

The technical issue he's raising I do want to address. We argued the motion to dismiss and it was granted, unlike what what's being rep-resented, though the Court did consider his amended pleading because in the order it says that the amended pleading isn't granted because it says that the amended pleading isn't granted because it fails to state a cause of action to Terry Jones.

So, he could be correct that the court granted leave, I think we were all unaware, I think that's an accurate statement that the court entered that so we argued on the basis of the original motion, but we brought to the court's attention the amended pleading. The Court considered that and said neither the original pleading nor the amended pleading stated a cause of action.

So consistent with what Mr. Ventimiglia is saying, I think probably in this order it should just articulate that the amended petition is reconsidered by the court and dismissed for failure to state a cause of action. So because it was rehashing of the original petition, but adding only the negligent

infliction of emotional distress, both myself and co counsel went through all those reasons why it did not state a cause of action as well.

Also, I think on behalf of myself and co counsel, under difficult circumstances, we have tried our best to act with great restraint in dealing with Mr. Ventimiglia, and I think all--everyone's actions in this case have been proper.

The court ruled properly, correctly last time dismissing the lawsuit. I would request that the court deny the motion to reconsider, enter an order explicitly stating that the amended pleading still do not state cause of action and denominating it as judgment so it can go to the Court of Appeals.

MS. ADAMEK MOORE: Your Honor, Jennine Adamek Moore on behalf of St. Louis C.O.G.,Inc., doing business as Twin Rivers Worship Center and the other defendants. There's an issue of whether or not they were properly served, but I would agree with everything my co counsel has indicated. I believe that it would be proven if we have the judgment today, indicate that everything was considered, I felt that the argument we had in front of judge Jamison in Division 10 back in May, the argument we had on June 11th, 2008 before you your Honor, with respect to the plaintiff's argument that he was unable to present argument on certain motions that day, I believe the Court recalls that we started to talk about some other motions and Mr. Ventimiglia indicated he was just going to go to the Court of Appeals, just drop it, I'm going to the Court to Appeals.

So I think he did have the opportunity to argue any additional motion that he had felt he

needed to have a hearing on. With respect to the order and whether or not plaintiffs had any sort of input for those orders, I believe there were two orders signed that day, and there was no question with respect to your honor you didn't have to come back out here and argue with respect to what the order said.

Mr. Ventimiglia had signed both of those orders. We had signed orders in the court records, so I believe all of that is on the record.

Also, with respect to the claim of conspiracy and any sort of conspiracy between the court, the judge, the clerk, counsel for defendants, I believe that it's clear that those claims are ridiculous. There's no conspiracy here against plaintiffs simply because they are pro se and, once again, I would reiterate everything we have filed, in the past two hearings, our pleadings we filed today, including our reply to plaintiff's motions to vacate, reopen or modify, and everything else we filed so far.

MR. TOBBEN: Just one additional comment. Mr. Ventimiglia indicated he wouldn't sign the order and then we'd have to go back to the court because we were indicating it was dismissed with prejudice, and he said the court didn't say that, and then we discussed it and it was clear that was the court's intent, so not only is his statement tat he didn't, I mean, I don't think he's saying he didn't get this order, but he certainly had input. He raised the question about putting him with prejudice, or not was correct.

So far reasons previously stated by myself and co counsel, we would request that the Court issue those orders.

THE COURT: Motion to reconsider is denied. and the amended petition is dismissed with prejudice.

MR. VENTIMIGIA: You gave them an extra opportunity. That's fine.
(The hearing was concluded.)

CERTIFICATE

I, Jennifer A. Dunn, Registered Professional Reporter and certified Court Reporter, do hereby certify that I am an official court reporter for the Circuit court of the County of St. Louis; that on July 10, 2008, I was present and reported all the proceedings had in the case of Vincent Ventimiglia, et al., Plaintiffs, versus, ST. LOUIS C.O.G., INC., d/b/a/ Twin Rivers Worship Center, Inc., et al., Defendant, Cause No. 08SL-CC00790.

I further certify that the foregoing pages contain a true and accurate reproduction of the proceedings.

/s/ Jennifer A. Dunn
JENNIFER A. DUNN, RPR, CCR #485

IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY STATE OF MISSOURI

		Filed;
VINCENT VENTIMIGLIA, et al.,	)	8/28/2008
	)	Denied;
Plaintiffs,	)	10/10/2008
-vs.-	)	Cause No.
	)	08SL-
	)	CC00790
	)	Division 5
ST. LOUIS C.O.G., INC., et al.,	)	
	)	
Defendants.	)	

MOTION FOR RELIEF, ACCORDANCE WITH , M.R.C.P. 74.06 (b),(2)(c),(d) BECAUSE OF FRAUD OF ATTORNEYS; DANIEL TOBBEN AND JENNINE ADAMEK-MOORE; WITH MOTION TO GIVE FACTS FINDINGS AND CONCLUSIONS OF LAW IN ACCORDANCE WITH RULE 73.01

JURISDICTIONAL STATEMENT

In accordance with M.R.C.P. 74.06(b)(2),(c),(d), this court retains jurisdiction for up to one year after the final judgment has been entered.

This court never addressed the Motion in accordance of Rule 74.06, in it's order of August 21, 2008. The Court mentioned the Rule 74.06 in it's opening paragraph, but Negligently, or Intentional, indirectly, or directly, deleted the Motion from the order.

THEREFORE, according the rules cited herein, this court does have jurisdiction to hear and rule on these matters in this underlying motion.

BRIEF HISTORY

Plaintiff did file a Motion in accordance with Rule 75.01, and/or Motion in accordance with Rule 74.06, with this court on August 11, 2008, and this court never ruled on that Motion in accordance with rule 73.01; Notwithstanding, this court used a Jurisdictional excuse and irrelevant cases, *Strickelber*, and *Stienmeyer*, as *red herrings* to keep the focus off of the real issues at stake, and that were plainly laid out in plaintiffs' Motion; ad those issues are;

1. Misrepresentations and fraud by the attorneys, involved in this case, Daniel Tobben, and Jennine Adamek-Moore, before this court.
2. The way the attorneys are completely reframing plaintiff's pleadings and this court uses those misrepresentations and rules in a most prejudiced fashion against plaintiffs. This is illegal, and this court is side stepping the issues to protect the attorneys.
3. The due process of plaintiffs that have been crushed by the unethical actions of the attorneys, in this case, on the defense team.
4. Plaintiff continues to complain about the misrepresentations of attorneys in the answers to plaintiffs pleadings. They are filled with lies and diversions and are against court rules and laws of this land.
5. This court never addressed any of the complaints of the attorney misconduct, and this court is bound to uphold the conduct of unscrupulous attorneys, and this court joins the attorneys team and tries to further masquerade the case in a prejudiced way causing more damage to plaintiffs case, and to plaintiffs.

6. Plaintiff is again asking this court to do its job and use fairness and justice in this case, and not deceit and prejudiced behavior.

7. By Judge Kintz evading this Motion, he is able to side step the body of the complaints. And by Judge Kintz, against court rules, neglecting to rule on The issues of the Motion 74.06, he can use red herrings, as he did using irrelevant cases, to advance his false argument and deny plaintiffs complaints and try to erase the complaints from the record. Mr. Ventimiglia, asks this court TO TAKE JUDICIAL NOTICE OF HIS COMPLAINTS IN THIS MOTION 74.06, and address each paragraph and give findings , facts, and conclusions of law. FURTHERMORE, plaintiff asks this court to report the illicit behavior of the attorneys to the proper authorities.

8. Mr. Ventimiglia addresses this court in order for this court to clarify it's position in this litigation. Plaintiff is preparing a Federal Suit with Judge Kintz, and Mr. Tobben, and Miss Moore as defendants for the unethical prejudice that he has shown court against plaintiffs in this court. Plaintiff wants to make it clear on the record where this court stands, for the record.

9. Plaintiff has asked for this court to examine and determine the behavior, and the pleading and to use equity, and to be neutral, not as the behavior has been in the past towards plaintiffs.

******* PLEASE ADDRESS EACH PARAGRAPH AND EACH ISSUE *******ACCORDING TO RULE 73.01(C) AND PLEASE MAKE THE RULINGS AND FINDINGS, ON THE RECORD

PETITION

Comes now plaintiff, Mr. Vincent Ventimiglia, for plaintiffs, and does ask this court to reopen, correct, vacate, amend, or modify upon terms that are just, it's judgment of July 10, 2008, or for the reasons set out below in this petition, plaintiff does ask for relief from the judgment of this court, to wit;

1. Defense attorneys have frauded this court with their baseless arguments and have convinced this court in an erroneous manor in their arguments and answers, that plaintiff Mr. Ventimiglia has not prevailed in Division 18, Cause No. 06CC-03797, or, plaintiffs, pro se, have mistakenly, inadvertently, or excusably neglected, to properly argue the prevailing party status, by overlooking, forgetting, or neglecting to enter into the record Judge Bresnahan's final order, convincing this court that plaintiff, Mr. Ventimiglia, had indeed prevailed in division 18, or both.

After a hearing in on Nov. 30, 2007 and in accordance with Rule 75.01, in which Judge Bresnahans' order clearing denominates " *plaintiff's prevailing party status* " in his Judgment and Order by stating very clearly;

" [D]efendants Motion For Clarification On The Judgment Assessment of Costs And Order Plaintiffs to Pay Defendants, Also Issue A Declaratory Judgment According To Missouri Rules of Civil Procedure 87.02 is partially granted to the extent the Court taxes as costs in FAVOR of defendant and AGAINST Plaintiff the sum of $180.00 representing 12 subpoenas at $15.00 each as stated by Defendant at the hearing of his motion for costs. The bond of $100.00 posted by Plaintiff is hereby ordered to be released and paid to Defendant in partial satisfaction of the

$180.00 assessment herein leaving the balance due from Plaintiff to Defendant in the sum of $80.0. In all other respects Defendant's Motions are denied.

All other pending Motions are denied. Cause remains dismissed without prejudice at Plaintiffs costs. " (caps and bold added by Mr. Ventimiglia) **SEE EXHIBITS A & B**

Judge Kintz adamantly declared that plaintiff, Mr. Ventimiglia, did not prevail in Division 18, and this judgment from Judge Bresnahan will correct that erroneous decision by the court. **SEE EXHIBIT'S A & B Motion to Clarify Judgment, and Judgment**

2. The attorneys of record committed fraud in this court by going off the record and making false facts that had nothing to do with plaintiff's pleadings and this court did not read plaintiffs pleadings, or this court would have clearly seen that the attorneys were misrepresenting plaintiff's Causes of Actions, constituting unethical behavior. This court at this time must correct the manifest injustice to plaintiffs and correct the manifest injustice that the misrepresentation caused.

MISREPRESENTATIONS OF ATTORNEYS

1. Plaintiffs did not prevail in Division 18;

2. Terry Jones was being sued because of actions at the church. Terry Jones is being sued for malicious prosecution, and withholding exculpatory evidence, wherein, he held Mr. Ventimiglia in irreparable harm, according to ELROD. SEE, Plaintiffs' Suit.

3. Somehow there is a sermon indicated by Mr. Ventimiglia in his pleadings, by attorney Moore and there is not one mention of a sermon, or religious, doctrinal dispute.

4. There needs to be a medical diagnosis for Emotional Distress. When, if fact, according to clear law, if there is outrageous conduct, it would not show clear emotional distress. SEE; CHRYLER VS. CAREY, attached as, EXHIBIT C. This case clearly shows severe egregious conduct by attorneys by withholding evidence and the court uses terms such as, " This is far more Egregious conduct then simple foot dragging." and, " The efforts of **Carey and Danis** to deny and conceal evidence, and to provide false and misleading testimony, seriously threatens the integrity of the trial as well as the judicial process in general."

5. The conduct of Terry Jones is far more reprehensible than **Danis** and **Careys'**, in the aforementioned case. It is Terry Jones' behavior in the court, that is the only complaint of plaintiffs. No where in plaintiff's pleading does it state the allegations that are recorded in defendant's answers.

6. Defendants have not followed M.R.C.P. in answering all of the allegations of plaintiffs, and therefore must be admitted true. And this court erroneously dismissed with prejudice, plaintiff's complaint. Defense attorneys did not response properly in order to avoid answering the averments, therefore frauding this court. NOTWITHSTANDING, the unanswered averments must be considered true, and not dismissed with prejudice.

7. Plaintiff has made an oral request for default against defendants, in accordance with **POPE VS. FEDERAL EXPRESS CORP., 974 F2d 982, 984 (8th Cir.1992). And, COMINSKY VS. JFTJ CORP., 989 F2d 1007, 1009 (8TH Cir.1993)**, in the hearing, recorded, on July 10, 2008, and asks this court to issue that order, forthwith.

8. The record clearly demonstrates bad faith on the part of the attorneys of record, Daniel Tobben and Jennine Adamek-Moore, and Terry Jones, the defendant in Division 18, which is the subject of plaintiff's suit against Terry Jones.

9. Plaintiffs will make an offer of proof by putting Daniel Tobben and Jennine Adamek-Moore on the witness stand and they will confess their misrepresentations and their violations of court rules, this will be much different that the frivolous filings that this court has been accustomed to from defense attorneys, in this case, so far.

10. Miss Adamek-Moore states in her Memorandum in Support..." [F]urther, it is clear that there was probable cause for the instigation of the restraining order matter." page # 5, bottom paragraph. This is a main topic in support of plaintiffs' suit, in that, the defendants could not prove any of the claims they alleged in Division 18. There were two discoveries and many courtroom battles, and Terry Jones stated he did not have any evidence to support the claims. See Motion for Judgment on the Pleading in Division 18, in the file. Miss Moore, clearly lied, misleading this court. (none of Miss Moore's averments are numbered or identifiable, against M.R.C.P. Rules).

11. Again, Miss Moore frauded this court in claiming that plaintiffs were using defamation to advance their claims. Again, the suit is for Malicious Prosecution, not defamation, and there are no damages claims for defamation, and Miss Moore is misrepresenting plaintiff's pleadings, and fraudulently, misleading this court. Plaintiffs rely on Malice and Reckless Disregard in support of their claims and Miss Moore misrepresented the true facts to this

court. Terry Jones did the same thing in Division 18, and according the CHRYSLER V. CAREY, that is egregious, and would definitely trigger outrageous conduct, on it's face, giving plaintiffs standing in this court in that leg of the claim.

12. These above stated issues are paramount to plaintiffs claims and this court must review the claims in their proper light and see clearly as the facts are aligned in order and not confused, misrepresented, and unethically, recklessly misplaced by Mr. Tobben and Miss Moore.

13. This court has mistakenly granted Mooted Motions to Dismiss against plaintiffs, with prejudice. This is a perfect remedy to correct this manifest injustice.

14. Miss Moore in her Response to Plaintiffs Motion 75.01 says, " TRWC never abandoned their claims." NOTWITHSTANDING, they are the ones who were forced to dismiss their own suit, the record and file is clear and substantiated, as Mr.Ventimiglia clearly shows in his suit. Mr.Ventimiglia was never allowed to argue these facts in court.

PRAYER

This court has the power to Entertain Independent Actions, and this is an Independent Action in accordance with Rule 74.06(b)(2)...and this court has the jurisdiction, power, and authority to reverse the judgment, set this case for trial on the merits, and hold defendants in default on their case, or grant relief to plaintiffs according to law, equity, and whatever this court can do in order with law and equity, and all Fairness of Due Process, and respectfully, plaintiffs do request this of this court:

AND PLAINTIFFS ASK THIS COURT TO:

1. Reverse itself due to the Misrepresentation of the attorneys, because this court can now see more clearly, the misconduct and misrepresentations of the attorneys, and this court can now see the manifest injustice it has done to plaintiffs, and is it unethical and this court will not tolerate misrepresentation, or misconduct from attorneys; and also,

2. Plaintiff asks this court to report the attorneys behavior to the proper authorities for sanctions and disciplinary means; and,

3. Grant plaintiffs costs for having endure and go through needless litigation, all due to the misconduct of the attorneys.

4. Or, whatever law, equity, and this court sees fit in meeting the damage done to plaintiffs.

Respectfully submitted,

/S/Vincent Ventimiglia
Vincent Ventimiglia, for plaintiffs
5817 Runnymede Place
Imperial, MO. 63052
Phone: 314-780-2256
Fax: 636-660-1536
Email:
vincentventimiglia@yahoo.com

CERTIFICATE OF SERVICE

Comes now, plaintiff, Mr. Ventimiglia, for plaintiffs, and does certify that a true copy of this document has been sent, via, first class mail, postage prepaid, this 26th day of August, 2008, to;

Daniel Tobben
150 N. Meramec
4th floor
Clayton, MO.
63105, and;

Jennine Adamek-Moore
1010 Market St.
20th floor
St. Louis, MO.
63101

/s/ Vincent Ventimiglia

IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY STATE OF MISSOURI

VINCENT VENTIMIGLIA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
-vs.-	)	Cause No.
	)08SLCC00790	
	)	
	)	Div. 5
ST. LOUIS C.O.G. INC., et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' PETITION TO SHOW CAUSE WHY DEFENSE ATTORNEYS SHOULD NOT BE HELD IN CONTEMPT OF COURT

Comes now plaintiff, Mr. Vincent Ventimiglia, pro se for plaintiffs, and does state in this " memorandum of law," the following laws and case law, in support of Plaintiffs' Petition to Show Cause..., to wit;

BRIEF STATEMENT OF FACTS

1. Plaintiffs have filed with this court a petition for defense attorney to show cause because of the continuous, contemptuous behavior of defense attorneys, because the defense attorneys continue to extract plaintiffs from the orders of the court, in violation of the Mo.Supreme Court Rules, outlined in the underlying Petition, paragraphs 1 through 6.

2. Please notice the transcript of the hearing on July 10, 2008 in Division 5, and the Order that the attorneys drafted and then the judge signed the order, Mr. Ventimiglia refused to sign the order.

3. The Order says, "[P]laintiffs' Motion for the Court to Amend, Vacate, Reopen,Correct, or Modify, for Good Cause, the Judgment of June 11, 2008, According to M.R.C.P.75.01 with accompanied, Sworn Affidavit and Exhibits" is heard ***argued*** and denied. *(emphasis added)*

4. Please read the transcript of that hearing. NO WHERE in the transcript does plaintiff argue his side of the Motion, or the other Motions called up again, for hearing. This is total misrepresentation of the contemnors and the court of the actual hearing.

5. Please notice on page #7 of the transcript, lines 4 through 13, where plaintiff is objecting to the behavior of Mr. Tobben of Mr. Tobben's behavior, [sic], " He has been an attorney for 30 years, he knows the rules and laws, and he is continually trying to oppress this Court and oppress plaintiff with his frivolous findings. And with that, I'll close for now, your Honor." Not only are the attorneys arguments frivolous, but they are baseless and arbitrary.

6. Mr. Ventimiglia did take a pause, when he said, " I'll close for now, your Honor." Mr. Ventimiglia was going to allow the opposition to respond to his objections at that time, because there was a lot of objections to rule upon and consider. The court never ruled on any objections and the defense attorneys deleted them from the order. Mr. Ventimiglia was never allowed any response to the frivolous argument of the defense attorneys. But, that never stopped the attorneys from illegally entering false evidence in the order. This misrepresentation in the order by the

attorneys, causes a reader to believe that plaintiffs argued their motions and in reality they did not. It is a direct and outright lie from the attorneys, and the judge signed it. Plaintiff refused to sign the corrupted order.

Defense attorneys are trying to make it look like Mr. Ventimiglia abandoned his pleadings, when in fact, the attorneys and the court are trying to suppress them, and prevent a proper record for review in the Appeals Court.

7. This is a perfect example of the behavior that plaintiffs have been complaining about in the last three court sessions, that are outlined in the pleading in the file, that the attorneys and the court are trying to erase and ruin plaintiffs' case in the Ct. of Appeals. It is criminal and this court has the duty to sanction, hold in contempt, and notify the prosecuting attorney for filing charges and prosecution, and the board of disciplinary board of the Missouri Bar Association about the attorneys behavior.

8. Also, notice the last sentence of the order is more of the meandering melee of verbage of the attorneys, in question. " [A]ll plaintiffs' claims alleged causes of action are dismissed with prejudice for failure to state a cause of action, and this is entered as a judgment of the court. " The defense attorneys were masquerading the order of the court for their benefit. Plaintiff was trying to correct the order, but was almost arrested by the bailiff, and ordered to sit and be quiet. So plaintiff, Mr. Ventimiglia did comply, but never signed the bogus order. No mention of <u>Oral Motion for Default Against Attorneys</u>. Trans. page #3, lines 7 - 16. They were trying to cover it up, unethically, and against court rules and laws. No mention of objections of plaintiffs. There was over

eight objections by plaintiff, Mr. Ventimiglia. The court disregarded the objections as did the attorneys, and did not allow plaintiff, Mr. Ventimiglia an opportunity to respond to the frivolous arguments of attorneys, and/or complete plaintiffs' presentation of the hearing. Including the oral response, and call and argue all motions that were noticed up the day of July 10, 2008. See Noticed Hearing of July 10, 2008, in Division 5.

9. Plaintiffs had a Request for a Declaratory Judgment in the First Amended Complaint, and, by Defense attorneys masquerading the order, they violated clear Rules of the M.S.Ct. as cited in plaintiffs' underlying petition. By defense attorneys actions in the constructing the illicit order and having the judge sign it, constitutes a crime, of fraud, tampering with evidence, interfering with a tribunal, reckless contempt of court, and other crimes, committed by the attorneys, as outlined in plaintiffs' Petition..., paragraphs 1 through 6.

10. No place in the transcript does the judge rule on the Cause of Action for the Declaratory Judgment, or does he mention it. But the attorneys very cleverly, misrepresented the hearing and the order, by adding words, and statements to the original order, that the judge never instructed them to do, such as, "[A]ll plaintiffs' claims and alleged causes of action are dismissed with prejudice for failure to state a cause of action, and this is entered as a judgment of the court!"

11. The attorneys were leading the judge, and the judge agreed to it, but there was never an order, or discussion about the claim of Declaratory Judgment, or other issues of plaintiffs' suit. See the transcript of the proceedings.

12. There was also noticed up for hearing the

Motion for a Judgment Order and Request the Court Give Facts, Findings, and Conclusions of Law, but the attorneys, once again, deleted the motion from the orders, Clearly, demonstrating recklessness, maliceousness, and with aforethought; depriving plaintiffs due process, by committing contempt of court, as outlined in this memorandum of law, in support of plaintiffs' Petition to Show Cause....

13. On page #8, Mr.Ventimiglia objected to a false statement by Mr. Tobben. See, trans, page 8, lines 13, 14, wherein Mr. Ventimiglia objected and the court would not allow the objection. The court never allowed Mr. Ventimiglia's objection to be heard, showing very prejudiced behavior against plaintiffs, or allowed Mr. Ventimiglia a response to present his arguments after the court allowed defense two opportunities.

14. Please notice page 12, line 3-6, where the hearing was ended. Mr. Ventimiglia complained that the judge gave the attorneys two opportunities to respond, but the judge was hurrying off of the bench, not giving Mr. Ventimiglia an opportunity to respond and present the motions that were noticed up that day, or argue his side of the motion of the day, under rule 75.01. The support for the Motion 75.01, was the motions that Mr. Ventimiglia did incorporate into the hearing, but Mr. Ventimiglia was not allowed to actually argue the motions. This was a prejudiced hearing, against plaintiffs, trying to stifle plaintiffs pleadings from the Court and the Court of Appeals. And the court, with the attorneys, were trying to deny plain-tiffs' Due Process. The court is very prejudiced against plaintiffs' and the attorneys are taking complete advantage of the situation, in an unethical and illegal manor causing more harm to plaintiffs.

15. NOTWITHSTANDING, where defense

attorneys continue the behavior that is outlined in this entire suit, one can only deduce from their behavior that it is CRIMINAL, DIRECT, AND CONTINUOUS.

16. The contempt plaintiffs are identifying in their petition is criminal, against defense attorneys, Daniel Tobben, & Jennine Adamek-Moore. The elements of the actions warrant severe action against the attorneys and possibly the court, Division 5.

CONTEMPT OF COURT

REVISED STATUTE OF MISSOURI
CHAPTER 536, SECTION 536.095
PRIMARY AUTHORITY

" in any hearing in a contested case before an agency created by the constitution or state statute if any person acts or refuses to act in such manor that a contempt of court would have been committed..."

" the deliberate obstruction of a court's proceedings by refusing to obey a court order or by interfering with court procedures. Contempt of court can be punished by fine, imprisonment, or both."

" an act or omission intended to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for it's authority;

1. There are two kinds, direct and constructive." 249 S.2d 127, 128. Direct contempt openly and in the presence of the court, resists the power of the court,

102 A.400,406; and consequential, or constructive contempt results from matters outside the court, such as failure to comply with orders. 114 P. 257, 258.

2. Another classification differentiates between civil and criminal contempt. **CIVIL CONTEMPT** consists of failure to do something which is ordered by the court for the benefit of the other party to the proceedings (sometimes called relief to the litigants), while **CRIMINAL CONTEMPT** are acts in disrespect of the courts or its processes which obstruct the administration of justice. **199 S.W.2d 613, 614**.

3. The penalty for criminal contempt is a fine or imprisonment for an specific period of time, intended as punishment which must be tried by a jury if post conviction contempt proceedings impose sentences exceeding as aggregate of six months. 94 S.Ct. 2687, 2692.

ELEMENTS OF OFFENSE OF CONTEMPT

FROM THE CRIMINAL RESOURCE MANUAL 753
SECONDARY AUTHORITY

1. There are four elements under U.S.C. § 401(1) *(criminal)*. They are: (1) misbehavior of a person; (2) in or near to the presence of the court; (3) which obstructs the administration of justice; and (4) which is committed with the required degree of criminal intent. *United States v. McGainey, 37 F3d, 682, 683 (D.C. Cir. 1994).*

2. An attorney is not an " *officer* " of the court for purposes of § 401(2). *In re Halloway, 995 F.2d 1080 (D.C. Cir.), cert denied, 114 S.Ct. 1537 (1993).*

3. There are three essential elements under 18 U.S.C. § 401(3) *(civil).* They are: (1) there must be a violation; (2) of a clear and reasonably specific order; and (3) the violation was willful. ***United States v. Nynex Corp., 8 F.3d 52, 54 (D.C. Cir. 1993).***
When distinguishing between types of contempt there are two broad categories: criminal versus civil, and direct versus indirect.

GENERAL DEFINITION OF CONTEMPT

FROM THE CRIMINAL RESOURCE MANUAL 752
SECONDARY AUTHORITY

1. Contempt of court is an act of disobedience or disrespect towards the judicial branch of the government, or an interference with it's orderly process. It is an offense against a court of justice or a person to whom the judicial functions of the sovereignty have been delegated.
2. The power of a federal court to punish a contempt of its authority is limited by Title 18 U.S.C., Section 401 to: " (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

CHARACTERIZATION OF THE ACTION WHEN BOTH CRIMINAL AND CIVIL CONTEMPTS ELEMENTS ARE PRESENT

CRIMINAL RESOURCE MANUAL 758
PRIMARY AND SECONDARY AUTHORITY

1. When contempt action is not clearly specified as criminal or civil and a single order is entered granting both punitive and remedial relief, the criminal feature of the order is dominant and fixes its character for purposes or review. ***SEE: Penfield Co. v. SEC, 330 U.S. 585,591 (1947); Union tool co. v. Wilson, 259 U.S. 107, 110 (1922); Falstaff Brewing Corp. v. Miller Brewing Co., 702 F2d. 770, 778 (9th Cir. 1983).***

CRIMINAL VERSUS CIVIL CONTEMPT

CRIMINAL RESOURCE MANUAL 754
PRIMARY AND SECONDARY AUTHORITY

1. Because different substantive and procedural rules apply to civil and criminal contempts, distinctions between the two forms of contempt are important. " Criminal contempt is a crime in the ordinary sense," ***Bloom v. Illinois, 391 U.S. 194, 201 (1968),***
And criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings." ***Hicks v. Feiock, 485 U.S. 624, 632 (1988)***. These Constitutional protections include the right (1) not to be subject to double jeopardy, ***see, United States v. Dixon, 509 U.S. 688, 695 (1993); In re Bradley, 318 U.S. 318 U.S. 50 (1943);*** (2) to receive notice of the charges, (3) to receive assistance of counsel; (4) to receive summary process; (5) to present a defense, ***Cooke v. United States, 267 U.S. 515, 537***

(1925); (6) not to incriminate oneself, and (7) to prove beyond a reasonable doubt, *Gompers v. Bucks Stove and Range Co., 221 U.S. 418,444 (1911)*. For serious criminal contempts involving imprisonment of more than six months,these protections include the right to a jury trial. *Bloom , 391 U.S. 199.* By contrast, civil contempt sanctions -- which are designed to compel future compliance with a court order--are coercive and avoidable through obedience, and " thus may be an ordinary civil proceeding upon notice and an opportunity to be heard. Neither a jury trial nor proof beyond a reasonable doubt is required." *International Union, UMWA v. Bagwell, 512 U.S. 821, 114 S.Ct. 2552, 2557 (1994).*

IT IS THE ROLL OF THE STATE ATTORNEY IN PROSECUTING CRIMINAL CONTEMPT CASES AS ARE DEFINED IN THESE PLEADINGS OF PLAINTIFFS, AGAINST DEFENSE ATTORNEYS, DANIEL TOBBEN, AND JENNINE ADAMEK-MOORE.

RELIEF SOUGHT

1. Plaintiffs have clearly outlined the elements of the charges and the actions of the attorneys in the underlying Petition for Order to Show Cause, numbered averments, 1 through 6, and this memorandum, and, does ask this court to: order the Attorney General to investigate and file charges, if need be, against the attorneys named in this memorandum, Daniel Tobben, and Jennine Adamek-Moore; wherein the

elements of contempt, and the attorney relationship to the elements are clearly outlined in the underlying Petition, and supported by the transcript, testimony and record herein;

2. Plaintiffs have filed with this Petition, Summons, and Proposed Orders for this court, and plaintiffs ask this court to issue the Show Cause Orders to the attorneys, ordering them to show cause why this court should not impose contempt of court charges upon them for the wrongs acts outlined in plaintiffs' Petition, paragraphs 1 through 6;

3. Or plaintiffs ask this court to Hear and Rule on the pending Motion to Sanction the defense attorneys, impose sanctions, and report the attorneys to the Mo. Bar Disciplinary Counsel for the wrong acts against plaintiffs as outlined in this memorandum and the original petition, and the pleadings of plaintiffs, in Division 10, and Division 5.

4. APPOINT A MASTER, IN ACCORDANCE WITH M.R.C.P. 68.01, to determine all of the elements , and particulars in this contempt charge against the behavior of the attorneys, in question in this complaint, for either, prosecution, or exoneration of the Daniel Tobben, and Jennine Adamek-Moore.

5. Give an affirmative Declaratory Judgment overruling the sham court proceedings in Division 5, in accordance with the evidence provided to this court, via, the underlying Petition and Memorandum, in accordance with M.R.C.P. 87.07, and 87.08;

7. Rule on the Declaratory Judgment outlined in Plaintiff's First Amended Complaint, page #25;

8. Issue further relief of the Declaratory Judgment declaring that the orders of division 5, and 10, are vague, not complete, confusing, and inappropriate, and order the orders to be rewritten, properly, inclu-

ding all of the evidence that was deleted, or excluded by the attorneys of the defense and the court, in accordance with M.R.C.P. 87.10; and accept the Nunc Pro Tunc, proposed, corrected orders of plaintiff of the hearing on July 10, 2008, where the attorneys misrepresented the findings of the court, on record, and caused manifest injustice to plaintiffs, and their case.

9. ALSO; GRANT, in accordance with MISSOURI REVISED STATUTES SECTION 536.100, through, 536.150, and M.R.C.P. 100.01, a review in accordance with these laws, and in accordance with all of plaintiffs' requests in this underlying Petition;

10. The two defense attorneys, with this court have been trying to destroy plaintiff's case in this court and the court of appeals by deleting plaintiffs claims and arguments in the records and orders, so that the attorneys, on appeal, after the court conspired with them to delete the claims and arguments, would say to the appeals court, " plaintiffs did not present their claims and allegations and the court did not have a responsibilityto rule on the claims and arguments, therefore the court of appeals will not hear them now, on appeal." It is very clever of the court and the attorneys, but it is fraudulent and illegal, and this court MUST stop it, and stop the attorneys, from denying plaintiffs due process and equal protection, and hold them in contempt of court. SEE: M.R.C.P. 84.13.

12. Give facts findings, opinions, and conclusions of law, in accordance with the request of plaintiffs in their motion for such, that is filed and noticed for this hearing of September 24, 2008;

13. And or whatever, equity, law, and this court deems suitable according to the wrong acts committed by attorneys, in a capricious, arbitrary, and unreasonable manor against plaintiffs and this court in the

said, court hearings.

Respectfully submitted,

/s/Vincent Ventimiglia
Vincent Ventimiglia, pro se, for plaintiffs
5817 Runnymede Place
Imperial, MO. 63052
Phone: 314-780-2256
Fax: 636-660-1536

CERTIFICATE OF SERVICE

Comes now plaintiff, Mr. Ventimiglia, for plaintiffs, and does certify that a true copy of this format has been sent to attorneys listed below, via, 1st class mail, postage prepaid this 8th, of September, 2008; to attorneys listed below.

Daniel Tobben	Jennine Adamek-Moore
150 N. Meramec	1010 Market St.
4th floor	Suite 2000
Clayton, MO.	St. Louis, MO.
63105. And;	63101.

/s/ Vincent Ventimiglia

IN THE CIRCUIT COURT OF SAINT
LOUIS COUNTY, MISSOURI

VINCENT VENTIMIGLIA, et al.,	)	**FILED**
	)	**7/10/2008**
Plaintiffs,	)	
	)	
Vs.	)	No. 08SL-
	)	CC00790
	)	
ST. LOUIS, C.O.G.,INC., et al.,	)	
	)	
Defendants,	)	

JUDGMENT

Plaintiffs Motion For The Court to Amend, Vacate, Reopen, Correct, or Modify, for Good Causes The judgment of June 11, 2008, According to M.R.C. P. 75.01, with accompanied Sworn Affidavit, and exhibits, is heard, argued, and denied.

Plaintiff's Amended Petition is also dismissed With prejudice by the court, consistent with the prior order. All plaintiff's claims and alleged causes, of action are dismissed with prejudice for failure to state a cause of action, and this is entered as a judgment of this court.

/s/ plaintiff refused to sign
Vincent Ventimiglia

/s/ Jennine Adamek Moore
Atty, Brown and James, P.C.

Atty for St. Louis, C.O.G, Inc.,
Cutshall, and McFall
1010 Market St., 20th floor
St. Louis, Mo. 63101
314-421-3400

/s/ Daniel G. Tobben
Atty, Dana McKitrick, P.C.
150 N. Meramec
Suite 450
Clayton, Mo. 63105
314-726-1000

SO ORDERED:

/S/ Judge John F. Kintz ENTERED: 7/10/2008

Declaratory Judgment Filed:
March 30, 2009

1. Plaintiff's request for Declaratory Judgment in accordance with Mo. R.C.P. 87.02(a)(c), with respect to plaintiff's rights to return, in the future, if plaintiffs choose, to T.R.W.C. and freely worship, assemble, and not be attacked by the defendants, as defendants have in the past.

2. Defendants, through their attorney, have barred Mr. Ventimiglia from entering the property at T.R.W.C., or contact any staff from there. (plaintiff has numerous friends at T.R.W.C., as well as, business associates, and ministry associates).

3. Mr. Ventimiglia and his family have been attacked and denied freedoms of the U.S. Constitution that guarantee the restrictions that defendants are forcing upon plaintiff, Mr. Ventimiglia and his family, such as banishing plaintiffs from T.R.W.C. and maliciously prosecuting Mr. Ventimiglia, and then denying Mr. Ventimigla freedoms that others freely enjoy in pursuing happiness and liberty.

4. Defendants are also trying to muzzle Mr. Ventimiglia's free speech because defendants don't care for him. Mr. Ventimiglia has broken NO laws, contrary to defendant's criminal behavior, as outlined herein.

5. Plaintiffs would ask this Court to admonish defendants and order them to stop infringing on Mr. Ventimiglia's Constitutional rights outline herein, in this suit and to stop discriminating against him and his family, as outlined herein, in this suit. Order Defendants to obey the regulations governing Not-For-Profit entities and State, and Federal Laws in not discriminating against plaintiffs.

EXHIBIT C APPENDIX #18

IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT

VINCENT VENTIMIGLIA, DEBBIE VENTIMIGLIA, N.V., a minor, and, J.V., a minor, Appellants, -vs.- ST. LOUIS, C.O.G., INC., d/b/a TWIN RIVERS WORSHIP CENTER, T. BRYAN CUTSHALL, NORMAN MCFALL, TERRY JONES, AARON BUCK, Appellees.	)	No. ED91597 Circuit Court No. 08SL- CC-00790

APPEAL FROM THE CIRCUIT COURT OF SAINT LOUIS COUNTY, MISSOURI, HONORABLE JUDGE JAMISON, JUDGE KINTZ, JUDGE WHITTINGTON, JUDGE VINCENT III

APPELLANT'S BRIEF

****

ORAL ARGUMENT REQUESTED

****

Vincent Ventimiglia,
For himself, and minors,
5817 Runnymede Place
N.V., and, J.V.
Imperial, MO. 63052

Debbie Ventimiglia, pro se
5817 Runnymede Place
Imperial, MO. 63052

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JURISDICTIONAL STATEMENT

Appellants filed a timely civil action for damages and injunctive relief (L.F. 17-44), the appellants filed a Request to file an Amended complaint, (L.F. 63-65; 204-205; 206-234). After various motions, and pleadings were filed, the action was dismissed, (L.F. 276). After various Post Judgment motions were filed (L.F. 287-290; 295-307; 308-314; 316-320; 330-

338; 339-342), which were denied, (L.F. 343). A timely Notice of Appeal was filed, (L.F. 344-347; 348-349; 351-354). The Court of Appeals acknowledged receipt of Notice of Appeal, (L.F. 356).

The judgments of the County Circuit Courts are final judgments, and as none of the issues involve Missouri Supreme Court jurisdiction, the Missouri Court of Appeals has jurisdiction pursuant to Article V, Section 3, of the Missouri Constitution.

STATEMENT OF FACTS

Appellants Vincent Ventimiglia, Debbie Ventimiglia, and their two minor children, N.V., and, J.V., filed a civil action for damages, and equitable relief in the circuit court for the County of St. Louis, Missouri,(L.F. 17-44). The Appellants claimed Malicious Prosecution, and various personal injuries, costs, and wrong doings of Appellees. (L.F. 17-44).

The Appellants, subsequently, filed with leave of the Court, several times, amended complaints. (L.F. 55; 63-65; 204-205; 206-234).

Appellees filed a Motion to Dismiss. (L.F. 45-48; 95-107; 108-111; 112-115; 120-134). The Appellees never filed any motion to dismiss to the Appellant's amended Complaint. (L.F. 206-234).

Appellants relied solely on the original Motions to Dismiss, filed long before the last Amended complaint, filed by Appellants. (L.F. 45-48; 95-107; 108-111; 112-117; 120-134).

Appellants continuously opposed any Motions to Dismiss filed by Appellees. (L.F. 72-75; 78-90; 135-158; 164-166; 173-180; 186-189; 235-251).

Appellants timely filed and were granted lea

ve to proceed as Next of Friend for the minor children, N.V., and J.V.. (L.F. 66-67; 68-69; 91-94).

The Motions were sustained. (L.F. 56-57).

Appellants continued to demand hearings. (L.F. 58-62; 70-71; 76-77; 194-195; 201-203; 260; 266-265; 284).

Appellants filed a timely motion(s) disqualify judge. (L.F. 199-200; 269-275; 276; 277-278).

The Court issued a judgment in the case.(L.F. 284-286). The Appellants filed an immediate post judgment V.A.M.R. 75.01 MOTION. (L.F. 295-307; 308-314; 315; 316-320; 321; 322-328). The Appellees filed opposition. (L.F. 287-290; 330-338; 339-342;). The motion was denied.(L.F. 343-347). A timely Notice of Appeal was filed. (L.F. 344-347; 348-349; 350; 351-354).

Appellant offered into record showing that a prior civil action was dismissed in appellants favor, Mr. Ventimiglia. (L.F. 258-259; 252-257).These documents substantiated Appellants claims that the Appellees, herein, visited Malicious Prosecution against Appellants. (L.F. 206-234).

Appellant, Mr. Ventimiglia, continued his argument for plaintiffs, that the trail court was proceeding without jurisdiction. (trans. p. 2).

The Appellants made it clear to Judge Kintz, in the hearing, that Judge Jamison, and Judge Kintz granted Leave and First Amended Complaints by Appellants. (trans. p. 2, lines, 3-9).

Appellant, vehemently demanded sanctions for wrong doings by the attorneys for Appellees, the Certified Court Reporters, and Judges. (trans. P.p. 1-12).

As a matter of fact, the Appellants filed for sanctions, with a letter of warning, which the judges

refused to hear, to this date.(L.F. 262-265).

The record is replete with Appellant, Vincent Ventimiglia's protest against the misconduct inflicted on himself, and his family. (L.F. 1-356).

Appellants continued to challenge the outrageous misconduct committed by appellees counsel, the court reporter, the judges, and bailiff. (L.F. 287-356; trans. P.p. 1-12).

Appellants were pro se. (L.F. 17-44; 204-205; 206-234).(L.F. 1-356)
(trans. P.p. 1-12).

Appellants stand on the record showing the substance of these complaints as substantial. (L.F. 206-234).

POINTS RELIED UPON

I.

Whether the Circuit Court abused it's discretion, was clearly erroneous, and exceeded it's jurisdiction by sustaining Appellees Motions to Dismiss, which were by law, moot when an amended complaint was timely filed.

Hemphill v. Roy, 2008 U.S. Dist. Lexis 758, [#1],[#2] (ED Mo.2008).

Mohammad v. Frazer, 2008 U.S. Dist. Lexis 1002 at [#3],[#4] D.C. Minn. 2008).

Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 452 (Ca.8 2007).

Missouri Constitution, Article I § 14.

Missouri Constitution, Article 1§ 2, 10.

RSMO 509.080
RSMO 509.090
RSMO 509.100
RSMO 509.120

RSMO 509.260
RSMO 509.280
RSMO 509.290
RSMO 509.300
RSMO 509.310
RSMO 509.330
RSMO 509.400
RSMO 509.490
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Missouri Supreme Court Rule 55.07
Missouri Supreme Court Rule 55.08
Missouri Supreme Court Rule 55.09
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Missouri Supreme Court Rule 55.24
Missouri Supreme Court Rule 55.25
Missouri Supreme Court Rule 55.27
Missouri Supreme Court Rule 55.33

II.

Whether the Appellees were in legal default when Appellees failed to file a timely response to the Appellant's, granted First Amended Complaints, thereby making the Circuit Judges judgment sustaining moot Motions to Dismiss, null and void.

Dorris v. Muhna, 738 S,W, 2d 124 (MO.App.ED).

Hemphill v. Roy, 2008 U.S.Dist. Lexis 758 [#1] (EDMo. 2008).

Klaus v. Shelby, 42 S.W. 3d 829 (Mo.App.ED).

Mid-State Tubulars v. Maverick Tube Corp., 735 S.W. 2d 142 (Mo.App.ED)

Mohammad v. Frazer, 2008 U.S.Dist. Lexis 1002, at [#3][#4]
(D.C.Minn.2008).

Pure Country, Inc., v. Sigma Chi Fraternity, 312 F3d 952, 956
(Ca.8 2002).
Missouri Constitution, Article I § 2.
Missouri Constitution, Article I § 10.
RSMO 509.100
RSMO 509.260
RSMO 509.330
RSMO 509.490
Missouri Supreme Court Rule 74.05.

III.

Whether the Appellants were denied a fair and impartial proceeding by a set of biased judges, court reporters, and bailiff.

In Re Elliston, 789 S.W.2d 469 (Mo.1990).
In Re Kohn, 568 S.W. 2d 255 (Mo.1978).
Reserve Mining Co. v. Cord, 529 F.2d 181 (CA8).
Missouri Constitution, Article I § 2.
Missouri Constitution, Article I § 10.
Missouri Constitution, Article I § 14.
RSMO 509.250.
Missouri State Supreme Court Rule 55.07.
Missouri State Supreme Court Rule 2.
Missouri State Supreme Court Rule 4.
Missouri State Supreme Court Rule 5.

IV.

Whether Appellants were denied due process and equal protection of the law when their civil action was improperly dismissed on a motion to dismiss, where the circuit court failed to follow the strict rules of pro se litigants, that a motion to dismiss

shall not be granted unless the court can declare beyond a reasonable doubt that appellants could prove no set of facts that entitled them to relief on any theory of law.

Denton v. Hernandez, 112 S.Ct. 1728 (1991).

Haynes v. Kerner, 92 S.Ct. 594 (1972).

Scher v. Gilpin, 738 S.W. 2d 900, 901, 902 (WDMo.)

Missouri Constitution, Article I § 14.

RSMO 509.250.

Missouri State Supreme Court Rule 2.

Missouri State Supreme Court Rule 4.

Missouri State Supreme Court Rule 5.

ARGUMENT

I.

Whether the Circuit Court abused it's discretion, was clearly erroneous, and exceeded it's jurisdiction by sustaining Appellee's Motions to Dismiss Appellant's Suit, which were by law, moot when an Amended
Complaint was timely filed, and granted by the trial court.

Standard of Review

The standard of review, as to this claim, is clearly erroneous, abuse of discretion, and clear error. *Pure Country, Inc. v. Sigma Chi Fraternity,* 312 F3d 952, 956 (CA8, 2002); *Hemphill v. Roy,* 2008 U.S.Dist. Lexis 758 (ED Mo. 2008); *Mohammad v. Frazer,* 208 U.S.Dist. Lexis 1002, at [#3],[#4]
D.C. Minn. 2008).

The record in this case shows, undisputedly, that Amended Complaints were filed, and granted,

long after the motions to dismiss were filed. (L.F. 17-44; 55; 63-65; 204-205; 206-234). The Appellees filed Motions to Dismiss. (L.F. 45-48; 95-107; 108-111; 112-117; 120-134). The Appellees never filed a timely pleading to the Appellants Amended Complaints. (L.F. 206-234)(trans. P.p. 1-12).

Missouri State Constitution, Article 1§§ 2, 10, and, 14, demand that this Court not deny Appellants favorable judgment on their claims in this Court.

It is undisputed that all that Appellees filed in the circuit court was Motions to Dismiss. A motion to dismiss is not a legal responsive pleading. See: *Mohammad v. Frazer,* 2008 U.S.Dist. Lexis 1002, at [#3] [#4] (D.C. Minn.).

Clearly, the trial court abused it's discretion, was clearly erroneous, and committed clear error when the court dismissed Appellant's case based on a motion to dismiss that had been held moot by filing of a timely, and granted, Amended Complaint, or Complaints. (L.F. 55; 63-65; 204-205; 206-234). These are facts. (Trans. P.p. 1-12) Appellant is entitled to reversal in this appeal. See: R.S.MO.; 509.080; 509.100; 509.120; 509.260; 509.280; 509.290; 509. 300; 509.310; 509.330; 509.400; 509.490; 509.500:
See, also; Mo. Supreme Ct. Rules; 55.07; 55.08; 55.09; 55.11; 55.27;55.33.

II.

Whether the Appellees were in legal default when Appellees failed to file a timely response to Appellant's First Amended Complaints, that Divisions 5, and 10 granted, on April 30, 2008, and May 2, 2008. (L.F. 55; 63-65). Thereby, making the Circuit Judge's judgment sustaining a moot Motion to Dismiss,

null and void.

Standard of Review

The standard of review as to this claim is an abuse of discretion, clearly erroneous, and clear error. See: *Dorris v. Muhna*, 738 S.W.2d 124 (Mo.App.ED 1987); *Mid-state Tubulars, Inc. v. Maverick Tube Corp.*, 735 S.W. 2d 142 (Mo.App. ED 1987); *Klaus v. Shelby,* 42 S.W.3d 829
(Mo.App. ED 2001).

The Appellees were in clear default, in light of, Missouri Supreme Court Rule 74.05, in that the record shows that while the Appellees filed a Motion to Dismiss, (L.F. 45-48; 95-107; 108-111; 112-117; 120-124), the Motion to Dismiss was superseded by an Amended Complaint, (L.F. 206-234), (L.F. 55; 63-65, 204-205; 206-234).

The law is clear that a Motion to Dismiss is not an answer, and does not qualify to impede an Amended Complaint, or time pleading requirements. See: *Mohammad v. Frazer,* 2008 U.S.Dist. Lexis 1002, at [#3][#4] (D.C. Minn. 2008). Matter of fact, the Amended Complaint made the Motion to Dismiss, Moot. See: *Hemphill v. Roy, supra; and, Pure Country, Inc. supra.*

By law, and clearly established procedure, the default judgment must be issued. See: Missouri Supreme Court Rule 74.05. A careful research has learned that Appellees caused this default with their eyes open, and as such, cannot now fall back on their ignorance. See: *Mid-state Tululars v. Maverick Tube Corp.*, 735 S.W.2d 142 (Mo.App.ED).

III.

Whether the Appellants, were denied a fair and impartial proceeding by a set of biased judges, court reporter, and bailiff.

Standard of Review

The standard of review as to this claim is manifest injustice, clear error, abuse of discretion, and clearly erroneous. See: *Moran v. Clark,* 309 F.3d 516 (CA8); *Reserve Mining Co. v. Lord,* 524 F2d 181 (CA8).

There is no question, but that, Appellant suffered substantially by being forced not only to defend against the Appellees, but also the judges, the court reporters, and the bailiff. (trans. P.p. 2-12)(L.F. 181-185; 199-200; 266-268; 269-275; 276; 282-283; 295-307; 308-314; 315).

Appellant even asked for sanctions, which were never allowed to be heard and were maliciously distorted. (L.F. 262-265). The Legal File is full of instances of wrong doings. (L.F. 181-185; 199-200; 266-268; 269-275; 276; 282-283; 295-307; 308-314; 316-320; 329; 330-350).

The right to a fair and impartial judge is clearly established in Missouri Courts. See: *In Re Elliston,* 789 S.W. 2d 469 (Mo. 1990); *In Re Kohn,* 568 S.W. 2d255 o. 1978). See: Missouri Supreme Court Rule 51.07, mandating a biased judge to disqualify himself. See, also: Missouri Supreme Court Rule 2, Code of Judicial Conduct, all, which was violated in this case. (trans. P.p.2-12)(L.F. 181-185; 199-200; 282-283; 295-307; 308-314; 315; 316-320; 329-330).

Missouri Supreme Court Rule 4 does guarantee the professional conduct of attorneys, and is the safeguard to ensure the behavior of attorneys, but the record herein, shows those Rules were made a mockery of. (See: Mo.S.Ct. Rules 4-110, 4-3.3, 4-3.4). Missouri Constitution, Article I §§ 2, 10, and 14, demands judgment for Appellants.

IV.

Whether Appellants were denied due process and equal protection of the law when their civil action was improperly dismissed where the circuit court failed to follow the strict rules of pro se litigants, that a motion to dismiss shall not be granted unless the court can declare beyond a reasonable doubt that Appellants can prove no set of facts that entitled them to relief on any theory of law.

Standard of Review

The standard of review as to this point is clearly erroneous, abuse of discretion, clear error, and manifest injustice. See: *Scher v. Gilpin,* 738 S.W. 2d, 900, 901-902 (Mo.App. WD). *Haines v. Kerner,* 92 S.Ct. 594 (1972). *Denton v. Hernandez,* 112 S.Ct. 1728 (1991).

The Appellants incorporate herein the facts and issues in argument I, II, III, and restates same. At no time did the court make a finding declaring beyond a reasonable doubt that Appellants could prove no set of facts entitling them to relief under any theory of the law. (L.F. 276-343).

The Amended Complaint filed by the Appellants, (L.F. 206-234), wherein, the facts, and the claims were not even properly addressed by the courts judgment. (L.F. 276, 343), and were never opposed by any appellee's pleading. These Rules are mandatory; See; RSMO 509.080; 509.090; 509.100; 509.120; 509.260; 509.280; 509.290; 509.300; 509.310; 509.490; 509.500). Mo.S.Ct. Rules 55.07; 55.08; 55.09; 55.11; 55.24; 55.25; 55.27; 55.33)

Clearly under the rules of pro se pleadings, coupled with the rules of pleadings, show that the lower courts went to the extremes to place the Ventimiglia family, outside of those protections. The

Missouri Constitution, Article 1§§ 2, 10 and 14, demand that the rules, regulations, statutes, and clearly established procedures be given to the Ventimiglia's, by law.

CONCLUSION

Wherefore, Appellants pray that the Court reverse the judgments of the lower court for any and all other reasons stated, herein this petition, and appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE, AND CERTIFICATE OF COMPLIANCE WITH RULE 84.06

I certify that this brief complies with Missouri Supreme Court Rules; That it contains 3053 words of proportional spacing and determined by Microsoft

Word Perfect processing system used, and has size 14 font size, for letters; And the disk submitted herein, has been scanned for viruses, in accordance to Rule 84.06(g), and is virus free.

I further certify that a true copy of this brief, with disk, has been sent, via; first class U.S. Mail, postage prepaid, this 8th day of December, 2008, to the following attorneys for the Apellees:

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IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT

VINCENT VENTIMIGLIA, DEBBIE VENTIMIGLIA, N.V., a minor, and, J.V., a minor, Appellants, -vs.- ST. LOUIS, C.O.G., INC., d/b/a TWIN RIVERS WORSHIP CENTER, T. BRYAN CUTSHALL, NORMAN MCFALL, TERRY JONES, AARON BUCK, Appellees.	)	No. ED91597 Circuit Court No. 08SL-CC- 00790

APPEAL FROM THE CIRCUIT COURT OF SAINT LOUIS COUNTY, MISSOURI, HONORABLE JUDGE JAMISON, JUDGE KINTZ, JUDGE WHITTINGTON, JUDGE VINCENT III

APPELLANT'S REPLY BRIEF
TO C.O.G., INC.,S RESPONSE BRIEF

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JURISDICTIONAL STATEMENT

Appellants restate what has been said in their original brief as to this Court's Jurisdiction, and does restate the same, herein. (Appellant's Brief, p. # 7)

STATEMENT OF FACTS

Appellants do incorporate and does restate the Statement of Facts contained in Appellant's Reply Brief to Appellees, Terry Jones' Reply brief.

POINTS RELIED UPON

I. WHETHER THE CIRCUIT COURT ABUSED

IT'S DISCRETION, WAS CLEARLY ERRONEOUS, AND EXCEEDED IT'S JURISDICTION BY SUSTAINING APPELLEES' MOTIONS TO DISMISS, WHICH WERE, BY LAW, MOOT WHEN AN AMENDED COMPLAINT WAS TIMELY FILED AND GRATED BY THE COURT.

The trial Court erred, and abused it's discretion, without jurisdiction, when the trial court, knowingly, maintained a dismissal with prejudice, when it was notified, in time for the court to correct itself, in a Motion for Rehearing, in accordance to rule 75.01.

The court clearly knows that motions to dismiss are mooted out, and the original Motion of the plaintiffs became nullified, as did the motions to dismiss, of appellees, became moot, when the judge signed the Requests for Leave, and the amended pleadings, were filed with the court.

1. *Edwards v. Dwyer*, 2007 U.S. District Lexis 11685 (2007);
2. *Gering v. Walcot,* 975 S.W. 2d 496 (Mo. App. 1978);
3. *Burleson v. James Fleming & Enter. Leasing Co.*, 58 S.W. 3d 599 (Mo. App. W.D. 2001);
4. *State ex rel. Poucher v. Judge David Lee Vincent III*, 258 S.W. 3d 62,(Mo. 2008);
5. *State ex rel. Nixon v. Bell*, 873 S.W. 2d 644 (Mo. App. W.D.);
6. *Estate of Shaw,* 256 S.W. 3d 72 (Mo. Banc 2008);
7. *In re Marriage of Miller,* 196 S.W.3d 683, 694 (Mo. App. 2006);

8. *In re Marriage of Southard*, 733 S.W.2d 867, 869 (Mo. App. 1987);

9. *Shepler v. Shepler*, 348 S.W.2d 607, 609 (Mo. App. 1961);
10. *Jenkins v. McKeithen,* 395 U.S. 411, 421-22, 23 L. Ed. 2d 404, 89 S. Ct. 1843 (1969);
11. *Hamm v. Groose, 15 F.3d 110, 112 (8th Cir. 1994);*
12. R.S.Mo. 478.240.2;
13. *Hishon v. King & Spalding,* 467 U.S. 69, 73, 81 L. Ed. 2d 59, 104 S. Ct. 2229 (1984);
14. R.S.Mo. 512.160;
15. M.R.C.P. 84.04(C), 84.13(5)(E), 81.17.

II. WHETHER THE APPELLANTS WERE DENIED A FAIR AND IMPARTIAL PROCEEDING BY A SET OF BIASED JUDGES, COURT REPORTERS, AND BAILIFF, CREATING A MANIFEST INJUSTICE TO APPELLANTS

Appellants do, at this time, incorporate and restate the same, from Points I, above, and does incorporate and restate the contents of appellants' reply to Terry Jones, response brief, Points and Arguments, I, and II, herein, with the following;

The trial court erred and abused it's discretion by denying appellants fair impartial hearings by purposely, not recording their hearings, or giving facts, findings, and conclusions of laws, violating clear substantial laws, and even after appellants requested it. (L.F. 315) And the court erred when it refused to correct the manifest injustices by the attorneys committing fraud upon the court in order to deny appellant's meaning access to the courts for proper redress for damages sustained to the by a malicious prosecution by appellees, after appellees supplied adequate facts, and evidence to the court, showing

that appellees clearly prevailed, the case was frivolous, and their was no reason for the malicious prosecution.

The court deliberately denying any findings, facts, ruling on any issues, And giving any conclusions of laws, for the reasons that the court was prejudice, and biased, against appellants. And the court knew that appellants' case was substantial, and the facts were concise, and the allegations were correct. In so doing, deprived appellants of due process and equal protection of the laws.

1. *Haines v. Kerner*, 92 S.Ct. 594 (1972);
2. *Scher v. Gilpin,* 738 S.W. 2d 900, 901, 902 (Mo. App. W.D.);
3. *Costa v. Allen,* 2009 Mo. Lexis (Mo. Banc 2009);
4. *Scherer v. Rhodes*, 94 S.Ct. 1683 (1974);
5. M.R.C.P. 84.04(C), 84.13(5)(E), 81.17; AND ALL CASES CITED HEREIN.
6. *Missouri Supreme Court Rules*: Rule 4-3.3.(a) · Rule 4-3.7(a);
7. *First Amendment to the U.S. Constitution;*
8. *Missouri Constitution, Article I, Section 14.*

III. WHETHER THE APPELLANTS WERE DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW WHEN THEIR CIVIL ACTION WAS IMPROPERLY DISMISSED ON A MOTION TO DISMISS, WHERE THE CIRCUIT COURT FAILED TO FOLLOW THE STRICT RULES OF PRO SE LITIGANTS, THAT A MOTION TO DISMISS SHALL NOT BE GRANTED UNLESS THE COURT CAN DECLARE BEYOND A REASONABLE DOUBT THAT APPELLANTS COULD PROVE NO SET OF FACTS THAT ENTITLED

THEM TO RELIEF ON ANY THEORY OF LAW.

Appellants do incorporate, Points I, and II, above, and does restate the same, herein this Point III., with Points and Arguments I, and II, from appellants' reply brief to Terry Jones' response brief, and does add that the trial court did in fact, deny appellants Due process of law, and equal protection of the laws, by not following the strict rules of interpreting, hearing, and ruling on appellant's claims, issues, facts, and for that matter, the [1]court did not examine any evidence, but rather, dismissed with prejudice, and tried to usurp M.R.C.P. and in conspiracy with the other judges involved, denied appellants' due process, and equal protection of the laws, cited here-in, this underlying brief, and the initial pro se brief.

1. *Scher v. Gilpin,* 738 S.W. 2d 900, 901, 902 (Mo. App. W.D.);
2. *Muhammad v. Close*, 124 S. Ct. 1303 (2004);
3. *Ventimiglia v. St. Louis County et al.*, 2008, (E.D. 2008, and 2009);
4. *Deakins v. Monoghan*, 108 S.Ct. 523 (1988);
5. *Hazel Atlas Glass Co. v. Hartford Empire Co.* 322 U.S. 238, 246 (1944);
6. *State v. Vidauri*, 515 S.W. 2d 562, 564 (Mo. Banc);
7. 4 Conn. L.J. 589 (1997-1998);
8. *Duke La Crosse Rape Case;*
9. M.R.C.P. 84.04(C), 84.13(5)(E), 81.17;

---

[1] The court abused it's discretion, and authority, without jurisdiction, and negated the Rules, and Laws, cited herein, to continue the damages that have been done to the appellants, from the prior litigation in Division 18, malicious prosecution, as outlined herein. Violating appellants due process and equal protection of the laws.

10. First Amendment to the U.S. Constitution;
11. *Missouri Constitution, Article I, Section 14*;
13. *Missouri Supreme Court Rules*: Rule 4-3.3.(a) - Rule 4-3.7(a).

IV. WHETHER THE TRIAL COURT ERRED[2], AND ABUSED IT'S DISCRETION IN DISMISSING APPELLANTS' FIRST AMENDED COMPLAINT THAT WAS RELEVANT, AND SHOULD HAVE BEEN GRANTED IN ACCORDANCE TO M.R.C.P. 55.33;

Appellants, do at this time, incorporate into this Point IV, Points I, II, III,
above, and does restate the same herein, this Point IV;

1. M.R.C.P. 55.33, FAC, should be granted;
2. *Edwards v. Dwyer*, Lexis, 11685;
3. *Thede v. Kapsas*, 897 N.E.2d 345, 325 Ill.Dec. 97 (Ill.App. Dist.3 10/21/2008);
4. *Hishon v. King & Spalding*, 467 U.S. 69, 73, 81

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[2] As stated above, the court was in error and abused it's discretion in dismissing appellant's claims in the underlying case, and the court was in clear error when it did not, allow the granted First Amended Complaint of appellants to go forward, when it was notified of the over sight, or error, either, intentional, or unintentional, and it did abuse it's discretion and showed clear prejudice, by not adhering to the laws of the state, and the rules of the court as cited herein; Causing manifest injustices to the appellants, by it's actions. The trial court should have, unquestionably, allowed the amended petition, with the added cause of action, addition-al damages, new issues, facts, theories, and new prayer, but chose to prejudice appellants, and this court must correct this manifest injustice against appellants, committed by the trial court. And denied appellants due process of law, and this Court should reverse the lower court for these reasons, herein.

L. Ed. 2d 59, 104 S. Ct. 2229 (1984);
5. *Jenkins v. McKeithen,* 395 U.S. 411, 421-22, 23 L. Ed. 2d 404, 89 S. Ct. 1843 (1969);
6. *Hamm v. Groose,* 15 F.3d 110, 112 (8th Cir. 1994);
7. *Iowa Right to Life Comm., Inc., v. Williams, 187 F.3d 963, 970 (8th Cir. 1999)*
8. *Scher v. Gilpin,* 738 S.W. 2d 900, 901, 902 (Mo. App. W.D.);
9. *M.R.C.P. 55.27;*
10. *M.R.C.P. 84.04(C), 84.13(5)(E), 81.17;*
11. *Pure Country, Inc. v. Sigma Chi Fraternity,* 312 F.3d 952, 956 (8th Cir. 2002);
12. *Reserve Mining Co. v. Cord,* 529 F.2d 181 (CA8);
13. Missouri Supreme Court Rules: Rule 4-3.3.(a) - Rule 4-3.7(a);
14. *First Amendment to the U.S. Constitution;*
15. *Missouri Constitution, Article I, Section 14;*

ARGUMENT

I. WHETHER THE CIRCUIT COURT ABUSED IT'S DISCRETION, WAS CLEARLY ERRONEOUS, AND EXCEEDED IT'S JURISDICTION BY SUSTAINING APPELLEES' MOTIONS TO DISMISS, WHICH WERE, BY LAW, MOOT WHEN AN AMENDED COMPLAINT WAS TIMELY FILED.

STANDARD OF REVIEW;

Adopted from appellants' brief, (p. #16); In addition; [2]*Edwards v. Dwyer*, 2007 U.S. District Lexis

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[2] (even though the above are federal cases and rules, M.R.C.P. 55.33, is identical to F.R.C.P. 15, and so are the procedures, these cases and rules, are guides, and secondary laws, and are applicable, authorities.

11685 (E.D. Mo. 2007);

See *Edwards v. Dwyers*; Lexis 11685; Rule 15(a), Federal Rules of Civil Procedure, permits a party to amend its pleading "once as a matter of course at any time before a responsive pleading is served[.] . . . Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party." A review of the file in the instant cause shows no defendant to have yet filed an Answer to plaintiff's Complaint. Although defendants Dwyer and Green have each filed a Motion to Dismiss raising defenses to plaintiff's original Compl-aint as permitted by Fed. R. Civ. P. 12(b), a Motion to Dismiss is not a "responsive pleading" as contemplated by Rule 15(a). See Lockhart v. Cedar Rapids Community Sch. Dist., 963 F. Supp. 805, 810 (N.D. Iowa 1997) (citing Allwaste, Inc. v. Hecht, 65 F.3d 1523, 1530 (9th Cir. 1995); McCrary v. Poythress, 638 F.2d 1308, 1314 (5th Cir. 1981); McDonald v. Hall, 579 F.2d 120 (1st Cir. 1978)). See also Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002). Inasmuch as a responsive pleading to plaintiff's original Complaint has not yet been filed or served, plaintiff's First Amended Complaint should be filed as a matter of course. Leave of Court or the consent of the defendants is not required. Fed. R. Civ. P. 15(a). In light of this amended complaint, it would be error for this Court to address defendants' Motions to Dismiss directed to the original Complaint. Pure Country, 312 F.3d at 956. *Id.*

See: *Stevanovic v. City of Chicago*, 896 N.E.2d 355, 385 Ill.App.3d 630, 324 Ill.Dec. 569 (Ill.App. Dist.1 09/30/2008) & R.S.Mo. 590.490.

"The Porter court noted that the Zeh court looked to federal law for guidance on this issue. The Zeh court examined Rule 15(c) of the Federal Rules of Civil Procedure (Fed. R. Civ. P. 15(c)) and noted that the court must examine whether the amended complaint provides the defendant with adequate notice of the claim against him and whether the defendant would be unfairly prejudiced if the "amendment were allowed to relate back to the date of the original complaint." Zeh, 111 Ill. 2d at 280, 489 N.E.2d at 1348. In its analysis the Porter court noted that although Illinois is a fact-pleading jurisdiction and the federal courts are notice pleading jurisdictions, the difference was unimportant for purposes of the court's analysis. Porter, 227 Ill. 2d at 360 n.1, 882 N.E.2d at 593 n.1." *Id.*

#As the analysis in appellants' case is important for purposes for this analysis, above, and, dealing with the procedure of Mooted Motions to Dismiss, IS, very relevant, there are cases of precedence, of this nature, above, & below.

See: *Thede v. Kapsas*, 897 N.E.2d 345, 325 Ill.Dec. 97 (Ill.App. Dist.3 10/21/2008),with; *Grunewald v. Mo. Pacific Railroad*, 331 F. 2d 983 ,986; and, *Savings & Finance Corp v. Blair*, 280 S.W. 2d 675,(Mo. App. S.D. 1955) "fn1 We recognize that this original complaint was nullified and withdrawn when *Thede* later filed her amended complaints against *Kapsas*.

Barnett v. Zion Park District, 171 Ill. 2d 378, 384, 665 N.E.2d 808, 811 (1996). However, the statements made in the original and first amended complaints are relevant to our analysis of Thede's prayer for equitable relief. *Texas Eastern Transmission Corp. v. McCrate,* 76 Ill. App. 3d 828, 833, 395 N.E.2d 624, 628 (1979)." *Id.*

Appellants appeal is very simple, and this Court can easily determine the outcome of this appeal by appellant's briefs, versus, the misstated, misrepresented, and fraudulent, briefs of appellees. And appellants hope this Court, does just that, with all of the surrounding evidence in this case, and considering the boldness, and arrogance of appellees and their attorneys, as the court did, in the cases, and laws, of precedence, presented, below;

1. Appellants' case is simple, and the record preserved;

See: TSP-Hope, Inc. v. Home Innovators of Illinois, LLC, 890 N.E.2d 1220, 382 Ill.App.3d 1171, 322 Ill.Dec. 301 (Ill.App. Dist.4 06/26/2008)

"When the record is simple, and the claimed errors are such that this court can easily decide them on the merits without the aid of an appellee's brief, this court should decide the appeal on its merits." *Plooy v. Paryani,* 275 Ill. App. 3d 1074, 1088, 657 N.E.2d 12, 23 (1995). In this case, plaintiff's brief sufficiently presents the issue and the record is relatively simple, so we address the merits of the case." *Id.*

2. Appellees have violated M.R.C.P. in their briefs; See, M.R.C.P., Rule 84.04; 84.13, 84.12; 81.17; 55.33; 55.27;

3. Appellants preserved their allegations of error, and appellees did not; and the trial Court did not have subject matter jurisdiction to dismiss appellants' case on mooted motions to dismiss;

See; R.S.MO. 512.160. 1. Apart from questions of jurisdiction of the trial court over the subject matter and questions as to the sufficiency of pleadings to state a claim upon which relief can be granted or a legal defense to a claim, no allegations of error shall be considered in any civil appeal except such as have been presented to or expressly decided by the trial court. *Id.*

And; Mo. Rev. Stat. § 478.240.2 (1986). Rather, for reviewing judicial decisions, it is the duty of the appropriate appellate courts of the state to review, in the respective cases, the propriety of the decisions made by the circuit judges. *Id.*

4. The trial Court erred by not applying pro se standard of review, causing manifest injustices to appellants, when the court dismissed with prejudice;

See; In determining whether plaintiffs have stated claims upon which relief can be granted, the Court is mindful that the complaint may be dismissed "only if it is clear that no relief can be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73, 81 L. Ed. 2d 59, 104 S. Ct. 2229 (1984). *Id.*

And; Defendants' motions to dismiss are directed against the very factually specific allegations made by the plaintiffs in their complaint. In deciding the

motions to dismiss, the Court must consider the plaintiffs' allegations to be true, and the Court must consider them in the light most favorable to the plaintiffs. Jenkins v. McKeithen, 395 U.S. 411, 421-22, 23 L. Ed. 2d 404, 89 S. Ct. 1843 (1969); Hamm v. Groose, 15 F.3d 110, 112 (8th Cir. 1994).*Id.*

The trial court lacked subject matter jurisdiction to dismiss appellants' case.

See; " In its inherent supervisory authority to confine trial courts to their jurisdiction and in its authority to review and vacate orders and decrees that are void, this Court orders the circuit court to vacate its orders in this case.." Shepler v. Shepler, 348 S.W.2d 607, 609 (Mo. App. 1961) *Id.*

And; In re Marriage of Miller, 196 S.W. 3d 683, 694 (Mo. App. 2006) (trial court ordered to vacate orders in which it did not have subject matter jurisdiction). *Id.*

5. The trial Court erred because it's order of June 11, 2008 was void, and the Court had ample opportunity to correct the void order, after appellants notified the court of it's mistake, causing miscarriage of justice, and causing manifest injustice to appellants; (L.F. 316-328); See, " Moreover, orders and decrees that are void, and not merely erroneous, will be considered colorable and subject to being reviewed and reversed on appeal." See, *In re Marriage of Southard*, 733 S.W. 2d 867, 869 (Mo. App. 1987). " In this case, the court purported to enter orders after it had lost the ability to do so. As such, those orders are invalid." *Id.*

6. The trial Court allowed fraud by the appellees attorneys, causing manifest injustices to appellants, and caused their case to dismissed with prejudice, denying appellants due process of law;(L.F. 58-343);

See, *HAZEL-ATLAS GLASS v. HARTFORD EMPIRE,* 322 U.S. 252; "No fraud is more odious than an attempt to subvert the administration of justice. The court is unanimous in condemning the transaction disclosed by this record. Our problem is how best the wrong should be righted and the wrongdoers pursued. Respect for orderly methods of procedure is especially important in a case of this sort." *Id.*

"It is complained that members of the bar have knowingly participated in the fraud. Remedies are available to purge recreant officers from the tribunals on whom the fraud was practiced." *Id.*

Appellees have a real hard time getting away from the blatant fact, that they failed to file a new, "Motion to Dismiss[3]," after appellants filed timely amended complaints. (A.B. p.p. #8-10). And they had plenty of time to it, after they, "found out about it," at least, thirty days prior to July 10, 2009, hearing, and Mr. Jones, via., Mr. Tobben did file an," invalid," Response to Appellants' FAC, against it, on June 11, 2009. Contrary to what C.O.G., INC., fraudulently declares. (C.O.G.,INC., brief, p. #12)

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[3] In light of this FAC, of appellants, in question, it would be, " **error** " for this court to address defendant's/ appellees' motions to dismiss, directed to the original complaint, as the appellees have designed in their briefs. See; *Pure Country, Inc.*, 312 F. 3d at 956; With; **M.R.C.P., Rule 84.04; 84.13, 84.12; 81.17; 55.33; 55.27; and cases cited, herein.**

This procedure has been in the courts for so long it is," hornbook law. " See; *Edwards v. Dwyer*, above, and cases cited, herein. *(It goes without saying, the house is not complete, without every brick, so it is with a law suit. It does not stop, simply because of a motion to dismiss).*

Now the appellees filed their brief with immaterial issues, wasting the Court's time, when the appellees should be explaining to this Court, how a circuit judge has the authority to grant a motion, that, by operation of law, became moot, and the original complaint was nullified. (appellees Tobben's brief, P.p. #13-17). Appellees also, try to convince this court that they did not have any time to object, or reply to FAC, that was granted. Because the attorneys, and the Court are in error, does not shift that burden onto appellants.

The claims, Tobben is trying to raise, now, is what he did not file in a timely manner in the lower court, in a response to appellant's F.A.C.. (Tobben brief, P.p. ##17-20, 20-24, 24-25, 25-28, 29-32, 32-34, 34-37); The same applies to C.O.G., Inc.'s brief, (P.p. ## 20-21, 22-31, 32-39, 40-43, 43-54).

As a matter of fact, Mr. Watters tried to twist[4] the scenario around to confuse the

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[4] " Not only is the granting of a motion to dismiss a final, appealable judgment, but plaintiff, did in fact appeal the granting of Twin Rivers' Motion Dismiss to this Court, though subsequently dismissed it." (this distortion is refuted by the record, and has no bearing why appellees failed to file a timely response, or any response, to the FAC, even after appellees and appellants, learned of the granted FAC). Mr. Watters unloads misleading legal issues, and his appendix, does not help him, either. (Russell Watters, brief, p.51, and pages 22-58).

court. (Russell Watters, brief, p.51, and pages 22-58). There have been a lot of miscitings of statutes, Rules, Case Law, but, they are a all part of a, " greater part," to revive what appellees knowingly, with open eyes, waived.

It cannot be denied or even disputed that an amended petition moots out a motion to dismiss. *Edwards v. Dwyer*, Supra, and cases cited in Ventimiglia brief, P.p. # 16-17).

Now, if that above is correct, then these appellees have not only forfeited any defense, but they have bound their clients to these waivers. *Gering v. Walcot,* 975 S.W. 2d 496 (Mo. App. 1978); *Burleson v. James Fleming & Enter. Leasing Co.*, 58 S.W. 3d 599 (Mo. App. W.D. 2001); " *The actions of the attorneys were imputed to the client.*"

So here we are, right back where we started from, and still, appellees, with eyes open wide, have abandoned all the motions to dismiss, by not responding to the amended petition, timely. See: *State ex rel. Poucher v. Judge David Lee Vincent III*, 258 S.W. 3d 62, (Mo. 2008); In where, [5]Judge Vincent III, exceeded his authority in a vindictive manner and the Supreme Court held void A judgment not authorized, by law.

The judgment of Judge Kintz, the final judgment of July 10, 2008, is null and void. (L.F. 284-2860), according to; *Edwards*, supra; *Poucher*, supra; *Nixon*, supra; and the judgment is a great manifest injustice to appellants, and this court must correct the

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[5] It just so happens, Judge Vincent is one of the judges, herein. See, also: *Nixon v. Bell*, 873 S.W. 2d 644 (Mo. APP. W.D. 1994), compelling a circuit court judge from exceeding his jurisdiction and authority.

erroneous judgment. *Estate of Shaw*, 256 S.W. 3d 72 (Mo. Banc 2008).

No Subject Matter Jurisdiction.

The issues are clear, and the trial court erred when ;1). Judge Kintz did not have subject matter jurisdiction* to dismiss appellants case, when FAC status was granted to appellants, and defendants Motions to Dismiss were mooted by the granting of the FAC, and the attorneys are in legal default for not responding to appellants/plaintiffs' FAC; causing reversible error, and a manifest injustice to appellants. See; " *Shepler v. Shepler,* 348 S.W.2d 607, 609 (Mo. App. 1961); *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 890 N.E.2d 1220, 382 Ill.App.3d 1171, 322 Ill.Dec. 301 (Ill.App. Dist.4 06/26/2008); *Plooy v. Paryani*, 275 Ill. App. 3d 1074, 1088, 657 N.E.2d 12, 23 (1995). *In re Marriage of Southard*, 733 S.W.2d 867, 869 (Mo. App. 1987).

* " In its inherent supervisory authority to confine trial courts to their jurisdiction and in its authority to review and vacate orders and decrees that are void, this Court orders the circuit court to vacate its orders in this case.." Shepler v. Shepler, 348 S.W.2d 607, 609 (Mo. App. 1961) *Id.*

This Court should order the lower court to vacate the void order it rendered against appellants in light of the contents of " appellants " appeal.

In re Marriage of Miller, 196 S.W.3d 683, 694 (Mo. App. 2006) (trial court ordered to vacate orders in which it did not have subject matter jurisdiction). *Id.*
See: TSP-Hope, Inc. v. Home Innovators of Illinois, LLC, 890 N.E.2d 1220, 382 Ill.App.3d 1171, 322

Ill.Dec. 301 (Ill.App. Dist.4 06/26/2008)

"When the record is simple, and the claimed errors are such that this court can easily decide them on the merits without the aid of an appellee's brief, this court should decide the appeal on its merits." Plooy v. Paryani, 275 Ill. App. 3d 1074, 1088, 657 N.E.2d 12, 23 (1995). In this case, plaintiff's brief sufficiently presents the issue and the record is relatively simple, so we address the merits of the case." *Id.*

" Moreover, orders and decrees that are void, and not merely erroneous, will be considered colorable and subject to being reviewed and reversed on appeal." See, In re Marriage of Southard, 733 S.W.2d 867, 869 (Mo. App. 1987). " In this case, the court purported to enter orders after it had lost the ability to do so. As such, those orders are invalid." *Id.*

II. WHETHER THE APPELLANTS WERE DENIED A FAIR AND IMPARTIAL PROCEEDING BY A SET OF BIASED JUDGES, COURT REPORTERS, AND BAILIFF.

STANDARD OF REVIEW;

Adopting the [7]Standard of Review from the first

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[7] Just as, all of the confusion, appellees' attorneys have inflicted into this appeal, is the same masquerading of the facts, and confusing the issues, that were never decided in the lower courts, appellees' attorneys are trying to turn this appeal into a three ring circus. But, when the dust is settled, and the smoke is clear, state and federal courts, cannot apply heightened standards to pro se litigants. This clear procedure of pro se, review status, does not show a hint of compliance from these attorneys who have wreaked havoc and malicious destruction to an honest suit filed by the Ventimiglia's, appellants. See;

pro se brief, (p. #19), the appellants will add that appellees have carried, into this court, so much junk mail in the form of a brief, filing everything, but the ring post, Tobben, brief, (P.p. 17-21, 20-24, 24-25, 25-28, 29-32, 32-34, 34-37); Watters brief, (P.p. 20-21, 22-31, 32-39, 40-43, 43-54). *Costa v. Allen, 2009 Mo. Lexis (Mo. 2009); Scher v. Gilpin, 738 S.W. 2d 900, 901, 902 Mo. App. W.D.);*
Scherer v. Rhodes, 94 S.CT. 1683 (1974);
Shepler v. Shepler, 348 S.W.2d 607, 609 (Mo. App. 1961); Haines v. Kerner, 92 S. Ct. 594 (1972);
R.S.MO. 509.250, " All pleadings shall be so construed as to sustain justice;" *M.R.C.P. 84.04(C), 84.13 (5)(E), 81.17; Mo. Constitution, Article, Section 14.* (meaningful[8] access to the Missouri courts);

III. WHETHER THE APPELLANTS WERE DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW WHEN THEIR CIVIL ACTION WAS IMPROPERLY DISMISSED AN A MOTION TO DISMISS, WHERE THE CIRCUIT COURT FAILED TO FOLLOW THE STRICT RULES OF PRO SE LITIGANTS, THAT A MOTION TO DISMISS SHALL NOT BE GRANTED UNLESS THE COURT CAN DECLARE BEYOND A

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[8] The Appellants were denied justice in this case, held to heightened standards, denied due process, equal protection, and meaningful access to the courts, and this Court should, by laws, and cases, cited, herein, restore appellants' justice, according to law and equity, by reversing Judge Kinrtz' judgment of July 10, 2009, and June 11, 2009, in where judge Kintz had no authority, jurisdiction, to dismiss, nor was there a challenge, to appellant's FAC, that was filed and granted, properly in Division 10, and Division 5. (L.F. 55, 63-65).

REASONABLE DOUBT THAT APPELLANTS COULD PROVE NO SET OF FACTS THAT ENTITLED THEM TO RELIEF ON ANY THEORY OF LAW.

STANDARD OF REVIEW;

Adopting the Standard of Review in the first pro se brief, (p.20), and does restate the same, herein, this Point IV.

As can be seen, b the total kaos in appellees' briefs; Tobben's, (P.p. 17-20, 20-24, 24-25, 25-28, 29-32, 32-34, 34-37), and, Watter's, (20-21, 22-31, 32-39, 40-43, 43-54). The appellees injected, so much havoc, and confusion into their briefs in order to try to overwhelm the "pro se status"-- and feed upon nothing more than, "[6]sham and mockery litigation."

The pro se status, demands the court read the FAC, from all four corners; *Scher v. Gilpin*, 738 S.W. 2d 900, 901, 902 (Mo. App. W.D).; further, the appellees suffer, the very default, they got themselves in-to, by not responding timely. *Mohammad v. Close*, 124 S. Ct. 1303 (2004), **defendants, by not timely preserving the issues in the lower court, forfeited that right to ever litigate merits in higher court.** Also, See; *State v. Vidauri*, 515 S.W.2d 562, 564 (Mo. Banc); **Parties cannot argue merits of case on appeal when they procedurally, defaulted the claim in the lower court.** *Lynch v. Mo. Dept. Corrections*, 267 S.W. 3d 796,(Mo. App. 2008); "In this situation, we do not become

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[6] In case, no one noticed, the Ventimiglia family, is not laughing. And, the Ventimiglia's have filed, what they believe to be, a legitimate grievance, win, lose, or draw, they wanted justice, as the law demands. What they got was, a hand full of attorneys, trying to " rat pack," the entire family, minors, included, and turned the " pro se " status, into a nightmare.

advocates for defendant and develop a theory that defendant did not make and does not argue." *Id.* See; *May Dept. Stores Co. v. Adworks, Inc.* 740 S.W.2d 383, 386 (Mo.App. 1987).

Appellants, did preserve their issues, and claims, 295-307, 308-314,315, 316-320, 321, 322-328; In that appellees, did not preserve these issues, stated above, relating to default, (L.F. 330-338, 339-342) (transcript of July 10, 2009, Appendix L, P.p.## A2-12)(Appendix N, transcript of September 24, 2008, for Contempt of Court hearing on attorneys).

Mo. Rev. Stat. § 478.240.2 (1986). Rather, for reviewing judicial decisions, it is the duty of the appropriate appellate courts of the state to review, in the respective cases, the propriety of the decisions made by the circuit judges.

Rule 84.04(d)(1).(d) Points Relied On.(1) **Where the appellate court reviews the decision of a trial court**, each point shall:

The only decision the judges in the lower courts held, was to;

1. Grant appellants 1st Amended Petitions, twice; (L.F. 63-65, 204-234)
2. Grant next of kin to Mr. Ventimiglia, for the minors; (L.F. 56-57, 66-67, 68- 69, 91-94)
3. Disqualify itself; (L.F. 76)
4. Then, deny all of plaintiff's motions, petitions, and requests with prejudice, giving no findings, conclusions of laws, explanations, or declaring that appellants could prove no set of facts, that would entitle them to relief from any theory of any law. And; Subsequently, granting respondents motions to dismiss, and then

continue the Dismissal with Prejudice, in the Motion for Rehearing, July 10, 2008. (L.F. 171, 172, 285-286, 343).

> This form of [7]dismissal is against clear established laws;
>
> **THE COURT NEVER MADE CLEAR THIS DEFINITION, ABOVE, IN *HISHON.***

Appellants had twenty nine (29)* disputed facts in their petitions, and the court never addressed the issues involved in the disputed facts. (L.F. 78-90)
See, Plaintiffs' Motion in Response to Defendant Terry Jones' Motion to Dismiss, and Companion Motions. (L.F., P.p. #5 - #12). According to; *SCHERER V. RHODES*, 94 S.CT. 1683 (1974), **ALL OF PLAINTIFF'S / APPELLANT'S, FACTS HAD TO BE ADMITTED TRUE.**
The judges made plain reversible error in their actions in this issue, by not addressing the issues, facts, disputed facts, and evidence of appellants. Defendants' motions to dismiss are directed against the very factually specific allegations made by the plaintiffs in their complaint. In deciding the motions

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[7] In determining whether plaintiffs have stated claims upon which relief can be granted, the Court is mindful that the complaint may be dismissed "only if it is clear that no relief can be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73, 81 L. Ed. 2d 59, 104 S. Ct. 2229 (1984). *Id.* " Mr. Ventimiglia has set fourth and established twenty nine (29) controverted, genuine issues of material fact herein this Response and therefore, defendant's Motion to Dismiss must be denied and dismissed, according to rule of law, to wit:" *Id. (condensed)*

to dismiss, the Court must consider the plaintiffs' allegations to be true, and the Court must consider them in the light most favorable to the plaintiffs. Jenkins v. McKeithen, 395 U.S. 411, 421-22, 23 L. Ed. 2d 404, 89 S. Ct. 1843 (1969); Hamm v. Groose, 15 F.3d 110, 112 (8th Cir. 1994).*Id.* With;
Haines v. Kerner, 925 S. Ct. 594 (1972);
Scher v. Gilpin, 738 S.W. 2d 900,901-902 (Mo.App. WD);
Reserve Mining Co. v. Cord, 529 F.2d 181 (CA8);
In Re Elliston, 789 S.W.2d 469 (Mo.1990);
In Re Kohn, 568 S.W. 2d 255 (Mo.1978).
In re Marriage of Miller, 196 S.W.3d 683, 694 (Mo. App. 2006) (trial court ordered to vacate orders in which it did not have subject matter jurisdiction). *Id.*
See: TSP-Hope, Inc. v. Home Innovators of Illinois, LLC, 890 N.E.2d 1220, 382 Ill.App.3d 1171, 322 Ill.Dec. 301 (Ill.App. Dist.4 06/26/2008)

"When the record is simple, and the claimed errors are such that this court can easily decide them on the merits without the aid of an appellee's brief, this court should decide the appeal on its merits." Plooy v. Paryani, 275 Ill. App. 3d 1074, 1088, 657 N.E.2d 12, 23 (1995). In this case, plaintiff's brief sufficiently presents the issue and the record is relatively simple, so we address the merits of the case." *Id.*

Privileged and Immune letters and communications
1. See; Appendices B, C, D, F; (R.S.Mo. 491.060(5).
See: *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 890 N.E.2d
1220, 382 Ill.App.3d 1171, 322 Ill.Dec. 301 (Ill.App. Dist.4 06/26/2008) *Plooy v. Paryani*, 275 Ill. App. 3d

1074, 1088, 657 N.E.2d 1223 (1995). *Lerrette v. Flynn;*

Appellees use the [9]privileged communications between Mr. Ventimiglia and Pastor Cutshall that are wholly permeated with biblical doctrine, church discipline, and spiritual matters, and are protected by the First Amendment to the U.S. Constitution. Mr. Jones brief should be stricken from the record, as the court sees fit.

The clergy communications can not be used in this case, because they are immune from this litigation, as judge Whittington stated in her dismissal of Mr. Ventimiglia's law suit in her court. See, **Appendices C**, Appellant's Motion for Summary Judgment; **D**, Defendant's Amended Omitted Counterclaim, demand for Jury Trial; **E**, Affidavit of Nick Frolos, (expert media witness); **F**, Motion for Evidentiary Hearing on the Evidence, or in the Alternate, Appoint a Master in Accordance with Supreme Ct. rule 62.01...; **G**, Judge Bresnahan's Order and Judgment, on June 8, 2007 **08/20/2007** Docket Entry: Writ Filed in [10]MO Supreme Court Text: PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATE, A WRIT OF PROHIBITION

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[9] These communications have been disputed in Division 18, and there never was a hearing, or ruling, to determine the immunity to the communications, or any hearings on the disputed evidence of Mr. Jones and respondents. This gives a *chilling effect* to appellant's 1st Amendment Rights.

[0] [10] Mr. Ventimiglia went to Missouri Supreme Court to try to receive justice for the crimes of Mr. Jones. The Mandamus was filed immediately, after Mr. Ventimiglia learned of respondent Jones' and respondent's attempt to try to Hi Jack the justice away from being remedied by a trial in Division 18, by dismissing their case, just before the trial.

ORDERED FILED "AS IS" WITH SERVICE. Filing Party: VENTIMIGLIA , VINCENT Docket Entry: Filing Fee Paid Filing Party: VENTIMIGLIA , VINCENT *Id.*

IV. WHETHER THE TRIAL COURT ERRED, AND ABUSED IT'S DISCRETION IN DISMISSING APPELLANTS' FIRST AMENDED COMPLAINT THAT WAS RELEVANT, AND SHOULD HAVE BEEN GRANTED IN ACCORDANCE TO M.R.C.P. 55.33;

STANDARD OF REVIEW;

Adopting the Standard of Review in the first pro se brief, (p.20), and does restate the same, herein, this Point IV.

As can be seen, in the total kaos in appellees' briefs; Tobben's, (P.p. 17-20, 20-24, 24-25, 25-28, 29-32, 32-34, 34-37), and, Watter's, (20-21, 22-31, 32-39, 40-43, 43-54). The appellees injected, so much havoc, and confusion into their briefs in order to try to overwhelm the "pro se status"-- and feed upon nothing more than, "[6]sham and mockery litigation."

The pro se status, demands the court read the FAC, from all four corners;
Scher v. Gilpin, 738 S.W. 2d 900, 901, 902 (Mo. App. W.D).; furthermore, the appellees suffer, the very

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[6] In case, no one noticed, the Ventimiglia family, is not laughing. And, the Ventimiglia's have filed, what they believe to be, a legitimate grievance, win, lose, or draw, they wanted justice, as the law demands. What they got was, a hand full of attorneys, trying to " rat pack," the entire family, minors, included, and turned the " pro se " status, into a nightmare.

default, they got themselves into, by not responding timely. *Mohammad v. Close*, 124 S. Ct. 1303 (2004), **defendants, by not timely preserving the issues in the lower court, forfeited that right to ever litigate merits in higher court.** Also, See; *State v. Vidauri*, 515 S.W.2d 562, 564 (Mo. Banc); **Parties cannot argue merits of case on appeal when they procedurally, defaulted the claim in the lower court**. *Lynch v. Mo. Dept. Corrections*, 267 S.W. 3d 796,(Mo. App. 2008); "In this situation, we do not become advocates for defendant and develop a theory that defendant did not make and does not argue." *Id.* See; *May Dept. Stores Co. v. Adworks, Inc.* 740 S.W.2d 383, 386 (Mo.App. 1987).

Appellants, did preserve their issues, and claims, 295-307, 308-314, 315, 316-320, 321, 322-328; **Including 1st Amendment Violations, (L.F. p. #323, par. b.)** In that appellees, did not preserve these issues, stated above, relating to default, (L.F. 330-338, 339-342) (transcript, Appendice L, P.p.## 2-12)(Appendice N, transcript of September 24, 2008, for Contempt of Court hearing on attorneys).

Mo. Rev. Stat. § 478.240.2 (1986). Rather, for reviewing judicial decisions, it is the duty of the appropriate appellate courts of the state to review, in the respective cases, the propriety of the decisions made by the circuit judges.

Rule 84.04(d)(1).

(d) Points Relied On.

(1) **Where the appellate court reviews the decision of a trial court**, each point shall:

The only decision the judges in the lower courts held, was to;

1. Grant appellants 1st Amended Petitions, twice; (L.F. 63-65, 204-234)

2. Grant next of kin to Mr. Ventimiglia, for the minors; (L.F. 56-57, 66-67, 68- 69, 91-94)

3. Disqualify itself; (L.F. 76)

4. Then, deny all of plaintiff's motions, petitions, and requests with prejudice, giving no findings, conclusions of laws, explanations, or declaring that appellants could prove no set of facts, that would entitle them to relief from any theory of any law[7]. And; Subsequently, granting respondents motions to dismiss, and then continue the Dismissal with Prejudice, in the Motion for Rehearing, July 10, 2008. (L.F. 171, 172, 285-286, 343)

This form of dismissal is against clear established laws;

THE COURT NEVER MADE CLEAR THIS DEFINITION, ABOVE, IN *HISHON.*

Appellants had twenty nine (29)* disputed facts in their petitions, and the court never addressed the issues involved in the disputed facts. (L.F. 78-90)
See, Plaintiffs' Motion in Response to Defendant Terry Jones' Motion to Dismiss, and Companion Motions. (L.F., P.p. #5 - #12), and proposed orders,

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[7] In determining whether plaintiffs have stated claims upon which relief can be granted, the Court is mindful that the complaint may be dismissed "only if it is clear that no relief can be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73, 81 L. Ed. 2d 59, 104 S. Ct. 2229 (1984). *Id.* " Mr. Ventimiglia has set fourth and established twenty nine (29) controverted, genuine issues of material fact herein this Response and therefore, defendant's Motion to Dismiss must be denied and dismissed, according to rule of law, to wit:" *Id. (condensed)*

(L.F. P.p.#173-193), ***disputed issues***.
According to; *SCHERER V. RHODES*, 94 S.CT. 1683 (1974), **ALL OF PLAINTIFF'S / APPELLANT'S, FACTS HAD TO BE ADMITTED TRUE.**
The judges made plain reversible error in their actions in this issue, by not addressing the issues, facts, disputed facts, and evidence of appellants. Defendants' motions to dismiss are directed against the very factually specific allegations made by the plaintiffs in their complaint. In deciding the motions to dismiss, the Court must consider the plaintiffs' allegations to be true, and the Court must consider them in the light most favorable to the plaintiffs. Jenkins v. McKeithen, 395 U.S. 411, 421-22, 23 L. Ed. 2d 404, 89 S. Ct. 1843 (1969); Hamm v. Groose, 15 F.3d 110, 112 (8th Cir. 1994).*Id.* Appellants, received, none of this. See, also;
Haines v. Kerner, 925 S. Ct. 594 (1972);
Scher v. Gilpin, 738 S.W. 2d 900,901-902 (Mo.App.WD);
Reserve Mining Co. v. Cord, 529 F.2d 181 (CA8);
In Re Elliston, 789 S.W.2d 469 (Mo.1990);
In Re Kohn, 568 S.W. 2d 255 (Mo.1978).

Wherefore, Appellants pray that the Court reverse the judgments of the lower court for any and all other reasons stated, herein this petition, and appeal.

Respectfully submitted,
/s/ Vincent Ventimiglia
Vincent Ventimiglia
5817 Runnymede Place
Imperial, MO. 63052

/s/ Debbie Ventimiglia
Debbie Ventimiglia
5817 Runnymede Place
Imperial, MO. 63052

/s/ Vincent Ventimigla
Vincent Ventimiglia,
For minor children,
N.V., and, J.V.
5817 Runnymede Place
Imperial, MO. 63052

CERTIFICATE OF SERVICE, AND CERTIFICATE OF COMPLIANCE WITH RULE 84.06

I certify that this brief complies with Missouri Supreme Court Rules;

That it contains 10520 words of proportional spacing and determined by Microsoft Word Perfect processing system used, and has size 12, and 14 font size, for letters, with Arial and Times New Roman letters; And the disk submitted herein, has been scanned for viruses, in accordance to Rule 84.06(g), and is virus free.

I further certify that a true copy of this brief, with disk, has been sent, via, first class U.S. Mail, postage prepaid, this 25th day of February, 2009, to the following attorneys for the Apellees:

Daniel Tobben
150 N. Meramec
Suite 450
Clayton, MO.
63105, and;

Jennine Adamek Moore
1010 Market St.
20th floor
St. Louis, MO.
63101.

/S/ Vincent Ventmiglia
Vincent Ventimiglia
5817 Runnymede Place
Imperial, MO. 63052

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

SAINT LOUIS COG, Inc., D/B/A Twin Rivers Worship Center,	)	
Plaintiff,	)	
-Vs.-	)	Cause # _____
	)	Circuit # 06CC-003797
VINCENT VENTIMIGLIA,	)	
Defendant.	)	

PETITION TO REMOVE CIVIL ACTION FROM STATE COURT TO FEDERAL COURT

JURISDICTIONAL CLAIM

Defendant comes now, and declares the jurisdiction of this court over such proceedings according to U.S.C. 28 sections 1441-1447 and does invoke this Court's jurisdiction to hear this matter.

STATEMENT OF PARTIES

PLAINTIFF, Church of God Inc., (COG, Inc.) d/b/a Twin Rivers Worship Center (TRWC) is represented by Terry Jones LLC, at 13321 N. Outer Hwy Forty, Town and Country, Missouri 63017;

DEFENDANT, Vincent Ventimiglia, is " pro se " representing himself residing at 5817 Runnymede Place, Imperial, Missouri 63052.

STATEMENT OF CASE AND REASONS FOR REMOVAL

1. Defendant, Vincent Ventimiglia had been attending TRWC for the past few years enjoying fellowship and ministries with other ministries at the church, including friends and business associates.

2. Mr. Ventimiglia is an ordained minister and had been communicating privately, via emails and letters and one meeting, with pastor Cutshall, senior pastor and corporate head of TRWC, about some unbiblical doctrines that pastor Cutshall had been preaching in the pulpit.

3. Pastor Cutshall became enraged with defendant's accusations and decided to attack Mr. Ventimiglia during a Sunday service. Mr. Ventimiglia had his family with him as well. Pastor Cutshall had Mr. Ventimiglia and his family escorted from the church building amidst the congregation screaming at Mr. Ventimiglia calling him horrendous names in

the presence of his family and friends in the congregation. This was done under the leading of pastor Cutshall.

4. Pastor Cutshall, COG, Inc., and Mr. Norman McFall, business administrator for TRWC, filed for at Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction against Mr. Ventimiglia with an affidavit from Mr. McFall that was filled with lies and a manufactured story against Mr. Ventimiglia. Mr. Jones admitted to Judge Bresnahan in a hearing that there was No evidence in support of the sworn affidavit against Mr. Ventimiglia, after compelling discovery.

5. Mr. Ventimiglia at the hearing for the T.R.O. agreed with Mr. Jones, attorney for plaintiff, to sign the agreement of the Temporary Injunction in order to mediate with pastor Cutshall and try to end the confusion and aggression against him. Little did Mr. Ventimiglia realize that Terry Jones, attorney had lied to him when Mr. Jones gave Mr. Ventimiglia the legal advice to sign the Temporary Injunction Order in order to mediate with the pastor. Mr. Ventimiglia was ignorant of the way the proceedings worked and was trusting Mr. Jones. He said he was a Christian, as well as Mr. Ventimiglia was.

6. Nevertheless, the case proceeded along through the mediation, where pastor Cutshall introduced a modified copy of the church service in question. Mr. Ventimiglia objected to the edited version because the attack of the congregation and some other very damning scenes for pastor Cutshall were edited out. Pastor Cutshall denied the editing, as well as the others, Norman McFall, and pastor Chuck Noell, who were also present at mediation. The

DVD was later discovered and it was also edited and altered.

7. Plaintiff entered the edited DVD into court as evidence against Mr. Ventimiglia, trying to persuade the court that Mr. Ventimiglia had attacked pastor Cutshall. Mr. Ventimiglia had the DVD, in question, professionally analyzed to find that it had indeed been altered, edited and remade from it's original form. SEE Exhibit L, IN PROHIBITION EXHIBIT A.

8. Terry Jones, attorney for plaintiff, works for plaintiff in another job position, became a witness against Mr. Ventimiglia, testifying hearsay, lies, and manufactured facts, with misleading arguments of law and subject matter, as well as created undo delayed and distractions that were brought up to the court, but the court continued to ignore the complaints by Mr. Ventimiglia. All of Mr. Jones conduct is in complete violation of Mo. Supreme Court Rules of Professional Conduct as well as Statutory crimes. Mr. Ventimiglia has filed motions to sanction and disqualify Mr. Jones, but the court mocks at Mr. Ventimiglia. SEE EXHIBITS G & M, Motions to Disqualify Division 18 , 1 & 2, in PROHIBITION, EXHIBIT A.

9. Mr. Ventimiglia has filed motions for Leave to File Counterclaims, Counterclaims, Motions for Jury Trials, and many other motions trying to receive fairness, equal protection of the law, a non-biased tribunal, and an impartial judge to hear his case. Only to be mocked at by the court and Mr. Jones. Judge Bresnahan denies every motion defendant, Mr. Ventimiglia has filed. Judge Bresnahan is even allowing Terry Jones, attorney for plaintiff, to withhold vital evidence that the court ordered Mr. Jones to hand over to the court. Mr. Ventimiglia has a Motion

for Sanctions against Mr. Jones pending in Division 18, as well as *another* Motion for Leave to file Counterclaim, and is being denied Due Process.

9. Judge Bresnahan refuses to give defendant any more Motion Hearing Days and there is a scheduled trial for November 1 and 2, 2007. A judge's trial and not a jury trial. Mr. Ventimiglia cannot possibly get a fair trial from Judge Bresnahan.*(That party's to a lawsuit have a right to an impartial judge is a bedrock principle of this nation's system of justice. See Bracy vs. Gramley, 520 U.S. 899, 904-05,117 S.Ct. 1793, 138 L.Ed. 2d 97 (1997), 520 U.S. 899, 117 S.Ct. 1793, 1797, 138 l.Ed. 2d 97).*

10. Mr. Ventimiglia has, repeatedly asked for the hearings to be recorded for future stages of the process, but Judge Bresnahan refuses to record any of the hearings. This case has been going on for over a year. Since September 21, 2006. Defendant has filed over 32 motions and other pleadings, with discoveries. Mr. Ventimiglia was making a record, via *paperwork*, on his own. The record is complete through the entrances, on the record by Mr. Ventimiglia. They will speak for themselves. (*" the floor established by the Due Process Clause clearly requires a " fair trial in a fair tribunal,' before a judge with no actual bias against the defendant or interest in the outcome of his particular case.") quoting Withrow vs. Larkin, 421 U.S. 35,46,95 S.Ct. 1456, 43 L.Ed 2d 712 (1975)); Haupt vs. Dillard, 17 F 3d285, 287 (9th Cir.1994) ("The right to a fair trial is ' a basic requirement of Due Process' and includes the right to an unbiased judge.")(quoting, In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942(1955).*

11. Plaintiff has filed a Motion to Dismiss.

Defendant Mr. Ventimiglia believes that plaintiff has been caught red handed with coming to court with *unclean hands and in bad faith* and are trying to escape, via their friend, Judge Bresnahan.

12. Defendant has filed with the court, Division 18 a list of costs, totaling over $28,000.00 and Judge Bresnahan said pro se litigants are *not* due any costs because of not being an attorney. In complete opposition of established law. See R.S.Mo. 514. Defendant has been a certified paralegal for thirty years and a Director of, "American Inmate Paralegal Association" for the past five years. So legal fees and costs would be appropriate for Mr. Ventimiglia in this matter. Mr. Ventimiglia has hired professional expert witnesses, legal assistance, and has many hours of preparation, and court appearances, as well as forfeiture of normal business practices, due to the malicious prosecution by plaintiff and Mr. Jones. SEE EXHIBIT A.

13. Defendant has filed a Motion in Opposition to plaintiff's Motion to Dismiss, demanding a jury trial and right to file a Counterclaim against the Malicious prosecution, or abuse of court process by plaintiffs, but Judge Bresnahan will not allow any hearings, and there is a time limit on filing Counterclaims, which has elapsed, denying defendant any Due Process, or Fairness. Judge Bresnahan will not allow any continuances, *defeating any fairness to defendant.* SEE EXHIBIT A, PROHIBITION AND EXHIBITS.

14. Defendant is a convicted felon of many years past and Terry Jones has prejudiced the court against Mr. Ventimiglia with unethical entrances on the record, via motions and courtroom antics. Mr. Ventimiglia has objected to the slander, only to find a deaf

ear in the court and sarcasm directed at Mr.Ventimiglia by the court. (once Mr. Ventimiglia misspelled Judge Bresnahan's name and the judge and Mr. Jones had a laughing moment deriding Mr. Ventimiglia and the court was laughing at Mr. Ventimiglia) The prior record is very irrelevant. It is over ten to thirty years ago, and there is no probative value in the record. The question is, " ***Is a convicted felon guaranteed Due Process and Equal Protection of the law as any other U.S. citizen would be? Even if said party is not represented by an attorney. Is there Juriprudence and honor in our court system in 2007?"*** *The United States Supreme Court noted that: The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases .... [Neutrality] preserves both the appearance and reality of fairness, ' generating the feeling, so important to a popular government, that justice has been done,' by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. Marshall vs. Jerrico, Inc., 446 U.S. 238, 242,100 S.Ct. 1610, 64 L.Ed.2d 182(1980) (quoting Joint Anti-Fascist Comm. vs. McGrath, 341 U.S.123, 172, 71 S.Ct. 624, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring)). In Marshall, the court noted that as far back as Chief JusticeTaft's opinion in Tumey vs. Ohio,273 U.S. 510, 47S.Ct. 437, 71 L.Ed. 749 (1927), the court has protected the " right to have an impartial judge." Id. at 535, 47 S.Ct. 437; see 446 U.S. at 242-43, 100 S.Ct. 1610.*

15. Defendant has filed a Writ of Mandamus, or in the alternate, Prohibition through to the Mo.S.Ct. and is in the 90 day window of U.S Supreme Ct. Cer-

tiorari on the matter in this case of the Abuse of Judicial Discretion. Defendant appeals to this court to defend his Constitutional Rights to have a fair and impartial tribunal according to U.S.C. 28 sections 1441 through 1447, and U.S.C. 28 1651 A, and all cases cited herein.

SEE EXHIBIT A, PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATE, A WRIT OF PROHIBITION WITH ALL EXHIBITS.

RELIEF SOUGHT

1. Defendant would ask this court to remove this case from Division 18 of the Saint Louis County Circuit Court and place in it under Federal Jurisdiction and allow a Federal Judge and jury to hear the case.
2. Allow defendant a fair and impartial jury trial, *and time* to join T. Bryan Cutshall and Norman McFall as parties to the suit.
3. Allow defendant time to file a counterclaim, or cross claim, and second and third party claims.
4. Sanction Terry Jones, attorney for plaintiff for his unethical hand in the former proceedings.
5. Sanction Judge Bresnahan for his reckless judicial abuse in this case.
6. Any and all equity, jurisprudence, and justice be awarded to defendant, Mr. Ventimiglia as the law allows in this manifest injustice against Mr. Ventimiglia.
7. Stay the proceedings in Division 18 until this case is heard by this court according to U.S.C. 28.
8. Defendant would also ask this court to issue a Declaratory Judgment on Mr. Ventimiglia's Rights, Remedies, and Status with regards to defendant's issues at hand and current predicament in this

matter.

PRAYER

Defendant does pray that this court allow all the relief requested in the above petition and sustain the requests made by defendant, Vincent Ventimiglia, on the merits shown.

Respectfully submitted,

/S/ Vincent Ventimiglia
Vincent Ventimiglia, pro se
5817 Runnymede Place
Imperial, MO. 63052
314-780-2256
636-287-1487
vincentventimiglia@yahoo.com

CERTIFICATION OF SERVICE

Comes now defendant, Vincent Ventimiglia, and does certify that a true copy of this Petition for Removal has been sent to the parties listed below on this 12th day of October 2007. Postage has been pre-paid and sent first class mail, to;

Terry Jones LLC
13321 N. Outer Hwy 40
Suite 700
Town and Country, MO.
63017; *and;*

The Honorable Judge
Richard C. Bresnahan
Division 18
7900 Carondelet Ave.
Clayton, MO. 63105.

Respectfully,

/s/ Vincent Ventimiglia
Vincent Ventimiglia

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

SAINT LOUIS COG, Inc., D/B/A Twin Rivers Worship Center,	)	
Plaintiff,	)	
-VS.-	)	Cause # _____
	)	Circuit # 06CC-003797 G CV
VINCENT VENTIMIGLIA	)	
Defendant.	)	

NOTICE

TO: CLERK, U.S. DISTRICT COURT
111 SO. Tenth Street
Saint Louis, MO. 63102;

CLERK, SAINT LOUIS COUNTY
CIRCUIT CLERK, AND DIV. 18,
JUDGE BRESNAHAN
7900 Carondelet Ave.
Clayton, MO. 63105;

ATTORNEY, TERRY JONES LLC
13321 N. Outer Hwy. 40
Suite 700
Town and Country, MO. 63017.

NOTICE IS HEREBY GIVEN, defendant will file a petition for removal of the case herein from State to Federal jurisdiction, according to U.S.C. 28, section 1441-1447. (See Attached Petition)

Defendant will file the Petition for U.S.C. 28, for Federal removal of this case on October 22, 2007 with the United States District Court at 111 South Tenth St., Saint Louis, Mo. 63102.

Respectfully submitted,

/s/ Vincent Ventimiglia
Vincent Ventimiglia, pro se
5817 Runnymede Place
Imperial, MO. 63052
314-780-2256
636-287-1487
vincentventimiglia@yahoo.com

CERTIFICATION OF SERVICE

Comes now defendant, Vincent Ventimiglia and does certify that a true and correct copy of this Notice has been sent to the below listed parties on this 12th day of October 2007, by first class mail, postage prepaid. Sent to:

Terry Jones LLC
13321 N. Outer Hwy 40
Suite 700
Town and Country, MO.
63017;*and;*

The Honorable Judge
Richard C. Bresnahan
Division 18, County
Courthouse
7900 Carondelet Ave.
Clayton, MO. 63105.

Respectfully,
/s/ Vincent Ventimiglia
Vincent Ventimiglia

IN THE CIRCUIT COURT OF THE 21ST JUDICIAL CIRCUIT OF SAINT LOUIS COUNTY STATE OF MISSOURI

ST.LOUIS COG, Inc. D/B/A TWIN RIVERS WORSHIP CENTER, et al.,	)	
PLAINTIFF,	)	
VS.	)	Cause No. 006CC-003797GV
VINCENT VENTIMIGLIA,	)	Division 18
DEFENDANT.	)	

MOTION TO STRIKE PLAINTIFF'S RESPONSE TO DISCOVERY DISMISS FOR DEFAULT AND QUASH DISCOVERY, OR IN THE ALTERNATE, AMEND THE DISCOVERY

Comes now Defendant, Minister Vincent Ventimiglia, and does state to this Court that Plaintiff is in Default in this case and this case must be dismissed for the reasons set out below, to wit;

1. According to Mo.R.C.P. 58.01(d) Plaintiff is in default because there has been NO

certification with this Court on the partial Discovery that was handed over to Defendant.

2. Plaintiff's attorney, Terry Jones has violated this Court's Order of February 21st, 2007 by not handing over a complete list of discovery as ordered by this Court; by not handing over; a) # 7. List of any material and true copies of all documents, testimonies, persons, or affidavits, or any evidence to be used in this trial against Defendant. b) T.R.W.C. Constitution, as listed in # 11 of the supplement order. c) a true copy of the 10:30 DVD recorded service of September 17th,2006, with an affidavit of, or a name of the ***party*** that produced the DVD and an affidavit of authenticity, <u>because this copy produced by somebody is altered, edited and modified</u>. And must be clarified as to it's origins. In accordance with Rule 58.01(c)(6), and (d).

Defendant does state that it has been altered, edited, modified and is not an accurate Account of the service. The DVD from mediation, even though, at this time mediation Is not admissible, there are parts in the mediation DVD that are even missing from the So called " Master Copy." It is a total sham. It must be investigated. Even the naked eye can detect the cuts and spices easily.

3. According to Norman McFall's affidavit, there is evidence that is missing as well. McFall states in # 9 of his sworn affidavit that, " Mr. Ventimiglia has also harassed and threatened T.R.W.C. elders deacons, and staff members, including Dr. Cutshall, by sending numerous emails, despite instructions from T.R.W.C. staff, elders, And deacons to cease email communications."

4. There is NOT ONE email or communication

from any staff, elder, deacon, or any member indicating ANY instruction to stop communications, other than elder Narraine months before this incident even occurred. There was an email from Pastor Cutshall on Sept 21st, 2007 instructing Defendant to stop emailing him. That was done after the attack on Defendant in the church and Cutshall was just trying to cover himself. But these communications are privileged and private and cannot be used as to it would violate privileged communications between clergy and it is definitely not harassment of any type. Surely, according to McFall's sworn affidavit, there must be many communications instructing Defendant not to communicate. Or McFall is a LIAR in his Affidavit and is incompetent, or Terry Jones made it up himself.

5. There is no evidence to any of McFall's claims in his affidavit against Defendant. Surely, Plaintiff has the evidence somewhere, and this Court must order them to produce it for the trial. Plaintiff is in violation of the Court order in not producing the evidence.

6. This Court must dismiss this case in accordance with Rule 61.01(d)(1)(2)(3), and order Plaintiff to pay costs to Defendant. In either scenario, The Plaintiff withheld evidence according to this Court's order and this Court should dismiss this case and find Plaintiff in contempt of Court; or this Court should dismiss because there is no evidence to support any of the Plaintiff's claims against defendant. And it has been an unwarranted continued attack against Defendant, or this Court should dismiss because all of the communications between Plaintiff and Defendant are confidential, private, and privileged due to the clergy to clergy status and the immunity that protects all parties involved. In accordance with the First

Amendment and other Privilege protections.

7. This Court must strike Plaintiff's Response due to the nature of # 8 in Terry Jones response in slandering Defendant again in an unwarranted unethical disclosure that violates Rule 56.01(c)(7), in that a trade secret or **other Confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.** Jones knows very well the Rules and he chooses, again, to violate Defendant by **slandering, and libeling** him before this Court in an unwarranted way and it must be stricken from the record and Jones must be sanctioned and dismissed as being prejudice because of his Conflict of Interest.

8. The proper way to list # 8 of Jones' response would be in this order, plaintiff will use criminal history and background of Defendant, if there is any, in cross-examining Defendant. And if this Court does not dismiss this case and Terry Jones, order Jones to correct the response with a new response and strike and remove the old one. In all fairness and equity. Defendant does have protected rights as well as Plaintiff.

9. Also, Defendant objects to pastor Cutshall's conditions in turning over communications from members of T.R.W.C. that did communicate with him about the attack against Defendant through emails. Pastor Cutshall wants to delete information about the witnesses by not revealing who they are and the contact means for Defendant to cross examine them in this case, or depose them, or subpoena them as witnesses. Clearly in violation of Discovery Rules 56.01 (b)(1) ...and the identity of persons having knowledge of any discoverable matter. These people will be able to testify to the egregious attack against defendant

that Plaintiff has altered from the DVD in trying to cover up their most horrible attack on Defendant.

10. Therefore Defendant prays that this Court dismiss this case with prejudice, dismiss Terry Jones, or in the alternate, order Jones to correct the Response for Discovery, or quash Discovery because of lack of Certification, or order Plaintiff to hand over all of the documents, with a proper affidavit in certifying the correctness of the modified, edited, and altered DVD evidence.(**please note the deceptive ways that Terry Jones is acting and sanction him, or reprimand him, or correct his unethical behavior, once and for all).**

Respectfully submitted,

/S/ Vincent Ventimiglia
Minister Vincent Ventimiglia
5817 Runnymede Place
Imperial, MO. 63052
314-780-2256
636-287-1487
Applsubcong@sbcglobal.net

Certificate of Service

Comes now defendant and does certify; that a true copy of this Motion was sent to Terry Jones at 13321 N. Outer 40 Rd.. 63017 first class mail, postage prepaid this 9th day of March, 2007.

/s/ Vincent Ventimiglia
Vincent Ventimiglia

September 26 , 2006

Dear Mr. Jones ,

Please find a response to the motions you filed against, per T.R.W.C., with exhibits . As you can see the motions are frivolous and there is a serious problem with our fine Christian friends telling the truth. It seems like Pharisees and attorneys have a lot in common . But never the less , I am a forgiving man .

I will give the plaintiff's a chance to withdraw their petitions and apologize openly in the church to my son and myself . After I get a written invitation , of course . The pastor is very clever , he can come with the perfect speech of reconciliation , etc . I would also appreciate if they clean up the trash they did to me in the prisons. And any other thing the Lord leads them to do in a reconciliation gesture that would please Him .

You see Mr. Jones , I have a number of friends who are witnesses to the whole thing . My son is suffering from the trauma as well as myself .I have lost one customer already from the incident and there are other problems developing .

I haven't talked to any newspapers yet , or attorneys , but I am confident that this would be big news . Could you imagine an article like this in the Star , Enquirer , or one of those international Hollywood newspapers that go nation wide in the isles of the grocery stores ?

Could you see the headlines ? Pastor calls man wolf and devil in front of five hundred in his

congregation! Or,Charlatan over steps his authority! Or , child suffers from mental stress over pastors inflaming accusations to His father in front of five hundred . Or ... who knows . Maybe , WHO REALLY IS THE DEVIL , INNOCENT MAN ,OR PASTOR ? I bet the media would have a field day .

My friend , we have a pretty secure civil matter in front of us . Read all of the record in front of you . All I was doing was trying to find a friend in one of your super star pastors . Maybe some comfort , or some love , or some guidance , or some fellowship , or ... we can go on forever .

It might go over criminal for Norman McFall ? How would the COG, Pastor B and Norman like to be sued over this ? No threats , just discussing Possibilities of the future . I have plenty of witnesses and evidence .

I will give you all one week before I file my response with the court .

Yours truly,

Vince Ventimiglia

IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY STATE OF MISSOURI

FILED NOV. 14, 2007
DENIED NOV. 30, 2007

ST. LOUIS COG, Inc. D/B/A TWIN RIVERS WORSHIP CENTER, a not-for-profit organization,	)	
PLAINTIFF,	)	
-vs.-	)	Cause No. 06CC-003797
VINCENT VENTIMIGLIA,	)	Division 18
DEFENDANT.	)	

DEFENDANT'S REQUEST LEAVE TO FILE COUNTERCLAIM; DEFENDANT'S AMENDED, OMITTED COUNTERCLAIM AGAINST PLAINTIFFS; DEMAND FOR JURY TRIAL; AND REQUEST TO JOIN T. BRYAN CUTSHALL AND NORMAN MCFALL AS PARTIES TO THIS CASE

Comes now, Defendant, Minister Vincent Ventimiglia, and would file this Counterclaim against Plaintiff's According to R.C.P.Mo.55.32(e); and, Defendant would ask leave of this court to file

this Counterclaim, for these reasons, to wit;

1. Defendant is requesting this court grant leave to defendant to file a counterclaim according to R.C.P.Mo. 55.32(e), or other reasons, as the court sees fit to do in this situation between plaintiff and defendant by allowing defendant to file his Counterclaim.

Justice would not be served in the event that this counterclaim would not be allowed because it has and would continue to cause undue hardship upon defendant if this remedy was not afforded to him for the malicious acts against him by plaintiff, T. Bryan Cutshall, and Norman McFall. [sic] (e) *Omitted Counterclaim. When a pleader fails to set up a Counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the counterclaim may be set up by amendment by leave of court.*

2. Defendant has filed a Motion for this court to grant leave to file this amended petition and would add this Counterclaim;

A. That plaintiff has filed with this court an affidavit by Norman McFall that is bogus and filled with lies causing ***Malicious Actions, Harassment, and Hostility*** against Defendant. Defendant incorporates all of the Motions, Judgment on the Pleading, Summary Judgment 74.04, Memorandum, and Affidavit, Motion for Sanctions, and all other Motions filed by defendant, into this pleading.

B. Defendant has filed with this court a supplemental response, in the form of a counterclaim according to Rule 55.32 (d) [sic] *Counterclaim Maturing or Acquired after the Pleading. A claim that either matured or was acquired by the pleader after*

serving the pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading. (this was done within the twenty days allowed after service of pleading, or response); also defendant has filed, previously, a Motion for Leave to file a Counterclaim, and counterclaim, and this court denied the requests.
(The court denied the Motions because judge Bresnahan said the malicious prosecution was premature at that time). And the time is ripe at this hour.

C. Defendant also asked that T. Bryan Cutshall and Norman McFall to be enjoined to this Counterclaim, as well as a demand for jury trial in this case. All in accordance of law set forth in the motion.

3. Defendant asked for documents, through the discovery procedure in this court, that could prove Plaintiff's claims against him in the affidavit filed by Terry Jones and Norman McFall, that was used to falsely procure the court into jurisdiction and probable cause in issuing restraint against defendant Ventimiglia. Plaintiff's claim there is no evidence and did not, and could not, produce any evidence in support of their claims against Defendant, when partial discovery was finally pried out of their attorney, Terry Jones. By admitting there was NO evidence in support of the affidavit used by plaintiff, the admission would show that the plaintiff, McFall, and Cutshall used deceit and lies to manipulate this tribunal. In violation of Supreme Court Rule 4-3.3(a) and other rules.

4. Defendant has hired an expert witness to analyze the DVD of the September 17, 2006 service where defendant was attacked by the pastor, T. Bryan

Cutshall. See Exhibit B. This is an affidavit by Mr. Nick Frolos, analysis expert.
Mr. Frolos' conclusion is," that the DVD, in question has definitely been tampered with." Showing unclean hands, once again, by our plaintiff, and company.

5. Defendant has filed numerous Motions complaining about the content of the allegations and has had no relief from this court in the matter. Now, since Terry Jones has admitted to this court that there is no evidence, and since COG, Inc., Cutshall, and Norman McFall has Maliciously Prosecuted, causing Damages, and Emotional Distress, among other Damages and Tort violations such as Breach of Confidence, Invasion of Privacy. And the Vicarious Liability holds COG Inc., responsible for the "underlings" actions in this case.

6. Defendant would ask for relief from plaintiff in the form of damages and costs, in order to compensate for damages arising out of legal expenses, expert witness, and costs, from negligence acts, causing mental stress to defendant in the amount of thirty five thousand dollars ($34,250.00). See: List of Costs, Exhibit A.

7. Because of the Malicious Actions, etc., Defendant has accrued costs in the form of legal assistance, subpoenas, an expert witness, time, and damages; these costs, and damages need to be satisfied by Plaintiff, T. Bryan Cutshall, and Norman McFall for the unwarranted Malicious Acts, etc. against defendant; in the amount of ($34,250.00).

8. There is also claims by T. Bryan Cutshall, and defendant, that Terry Jones, attorney for plaintiff, made up the affidavit and the evidence seems to support that claim as well, and there has been NO denying the accusation by plaintiff. (see

Motion for Sanctions against Terry Jones, Summary Judgment, Judgment on the Pleading, etc.) This court has been negligent in addressing the complaints by defendant and must take action and allow this counterclaim to go forward. This court must supply this remedy at this time. This court has jurisdiction according to R.C.P.Mo. 75.01 to act in response to defendant's request.(the court dismissed on Oct. 17th, 2007)

9. Defendant demands a jury trial in accordance with R.C.P.Mo. 69.01 and 92.02 (a)(2) and other laws, in accordance.

10. Plaintiff's "illusions and deceit" were made to show through pre trial remedies, and plaintiff's are lacking any merit, or credible facts, therefore admitting to Maliciously Prosecuted defendant causing damages to defendant and family of two sons and a wife.

And finally, defendant has prevailed against plaintiff and company in forcing them to dismiss their case against Mr. Ventimiglia. THIS CLEARLY SHOWS THE MALICIOUS SCHEME AGAINST DEFENDANT BY PLAINTIFF, TO THIS COURT. 11.

Defendant would also ask this court to " join " T. Bryan Cutshall and Norman McFall as parties to this case for the reasons set out in this petition and for reasons of equity and all fairness as the law provides. Rule 52.04 (a) [sic] *A person shall be joined in the action if: (1) in the person's absence complete relief cannot be accorded among those already parties...If the person has not been joined, the court shall order the person be made a party. COG, INC., MCFALL, AND CUTSHALL HAVE BEEN AN ACTIVE PART OF THE SCHEME BY ENTERING FALSE DOCUMENTS INTO THIS COURT AS*

EVIDENCE AND SUBJECTING THIS COURT TO THEIR SCHEMES.

12. THEREFORE, plaintiff prays that this court grant leave for defendant to file counterclaim, request for jury trial, and join T. Bryan Cutshall and Norman McFall to this case, according to all fairness, and equity as this court sees fit and the law allows.

My commission expires: Respectfully submitted,

_____ /S/ Vincent Ventimiglia
Vincent Ventimiglia
/S/ NOTARY PUBLIC 5817 Runnymede pl.
Notary Public Imperial, MO. 63052
314-780-2256
636-287-1487
vincentventimiglia@yahoo.com

Seal:

Certificate of Service

Comes now Defendant, Minister Vincent Ventimiglia, and does certify; that a true copy of this counter claim and demand for jury trial has been sent to Terry Jones at 13321 North Outer Forty Rd., Suite 700, St. Louis, MO. 63017, this14th day of November, 2007, by first class mail, postage prepaid.

/s/ Vincent Ventimiglia
Vincent Ventimiglia

IN THE CIRCUIT COURT OF THE COUNTY
OF ST. LOUIS STATE OF MISSOURI

ST. LOUIS COG, INC.	)	
D/B/A TWIN RIVERS	)	
WORSHIP CENTER,	)	
a Missouri not-for-profit corporation,	)	
	)	
Plaintiff,	)	
	)	
-vs.	)	Cause No.
	)	06CC-00
	)	3797GCV
	)	
VINCENT VENTIMIGLIA,	)	
	)	
Defendant.	)	

AFFIDAVIT OF NICK FROLOS

COMES NOW, Nick Frolos, and states upon information and belief, under oath, as follows:

1. I am the owner of Media Images, Inc., located at 1756 Chase Drive, St. Louis, Missouri 63026.

2. I have approximately fifteen (15) years experience in the audio/visual industry, I perform audio /visual depositions and mock trials for Litigation Insights. Approximately 15% of my business involves editing audio/ visual recordings.

3. My services were recently retained by Mr. Ventimiglia to examine a DVD of a Christian service, recorded on September 17, 2006, at the Twin Rivers Worship Center, and to make a professional determination as to whether the DVD had been edited or altered.

4. I advised Mr. Ventimiglia at the outset of our meeting not to tell me anything about the DVD where he believed it to be altered, as I did not want my opinion to be influenced by Mr. Ventimiglia's opinion.

5. I examined the DVD multiple times using a Horita - Time Code Generator. After extensive viewing the DVD and closely listening to the audio portion, it is my reasonable professional opinion that the DVD has either be edited or altered beginning at time sequence code 49:09:07. **Where a minister begins to personally launch a verbal attack against Mr. Ventimiglia.**

6. My professional opinion is based primarily on the fact that as the camera scans the congregation, during the verbal exchange between the minister and Mr. Ventimiglia, there is absolutely no facial changes within the congregation, no one is looking to see where the incident is taking place, no one expresses surprise, and the crowd's eyes are still fixed on the minister as if he was still in preaching mode. This leads me to believe that the DVD has been altered and edited from its original form.

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

I, Nick Frolos, being first duly sworn, on oath deposes and states that I have caused to be prepared and have read the foregoing, and that the statements made therein are true and correct, to my best information, knowledge, and belief.

s/ Nick Frolos
Nick Frolos

./s/ Peggy Sampson
Notary Public

Subscribed and sworn to before me on May 17, 2007
My Commission Expires 2/22/2001
A244.

IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT

VINCENT VENTIMIGLIA, DEBBIE VENTIMIGLIA, N.V., a minor, and, J.V., a minor, Appellants, -vs.- ST. LOUIS, C.O.G., INC., d/b/a TWIN RIVERS WORSHIP CENTER, T. BRYAN CUTSHALL, NORMAN MCFALL, TERRY JONES, AARON BUCK, Appellees/ Respondents	)	No. ED91597 Circuit Court No. 08SL-CC- 00790

APPEAL FROM THE CIRCUIT COURT OF SAINT LOUIS COUNTY, MISSOURI, HONORABLE JUDGE JAMISON, JUDGE KINTZ, JUDGE WHITTINGTON, JUDGE VINCENT III

APPELLANT'S REPLY BRIEF TO TERRY JONES' RESPONSE BRIEF

Vincent Ventimiglia,
For himself, and minors,
N.V., and, J.V.
5817 Runnymede Place
Imperial, MO. 63052

Debbie Ventimiglia, pro se
5817 Runnymede Place
Imperial, MO. 63052

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JURISDICTIONAL STATEMENT

Appellants restate what has been said in their original brief as to this Court's Jurisdiction, and does restate the same, herein. (Appellant's Brief, p. # 7)

STATEMENT OF FACTS

Appellants Vincent Ventimiglia, Debbie Ventimiglia, and their two minor sons, N.V, and, J.V., restate the Statement of Facts from their original brief and incorporate the same herein.
(appellant's brief, p.p. 8-10). Appellants would not, normally, according to M.R.C.P.84.04(g), repeat, or have to repeat, the arguments of their first brief, if, appellees did not try to totally confuse this Court with their briefs. Appellants have added substan-tially more cases and laws, in support of each of their Points, that will quench the false, arguments in the briefs of appellees . (Jones brief, P.p. #15, 30) (Watters brief, 48,49)

However, the facts stated by Russell F. Waters, Jennine Adamek Moore, Kenneth R. Goleaner, brief, (p.p. 8-14), and those facts stated by Daniel Tobben, Laura Gerdes Long, in the Dana McKitrick brief, (p.p. 2-8), Distort the facts of this case, and set in motion major attempts to confuse the docket entries, of the events below; (L.F. 135-158, 173-180, 181-185, 186-189, 190-193,235-251, 252-260, 262-265, 295-307, 308-314, 315-3280; (Appendices, A-P).

A) **Appellees were timely served with this multi-faced law suit;** (appellant's brief, p. #8);(herein after, addressed as A.B.)

B) **Appellees filed Motions to Dismiss;** (A.B. p. #8);

C) **Appellants, by leave, filed an Amended Complaint;** (A.B. p. #8);

D) **Appellees never filed any Response to the Amended Petition of appellants;** (A.B., p.#8); (*bearing in mind, pro se pleadings cannot be dismissed unless the court can declare beyond a reasonable doubt that the pro se, can prove no set of facts under any theory of law*) (A.B. , p.p. #15, 20) (L.F. 321, p.#4,

par. #11, declaring forfeiture of appellees, and, Appendice L, trans. p.#A3, lines, ##2-22, [16]default against attorneys).

E) **Appellant's First Amended Complaint, was relevant, and the Court should have granted it, and did;** Appellees attorneys have committed fraud in this Court and the lower courts, about the issues, involved, herein; (L.F. p. 15-21)

In addition to relying on the straight forward facts of the legal file (L.F. P.p. 45-48, 95-107, 108-111,

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[16] WITHOUT QUESTION, when the judge issued the judgment for appellees, (L.F. 284-286), it did so, by reviving, dead, mooted out, motions to dismiss, on such motions, collectively, or individually, and appellants protested. Notwithstanding, appellants' Original Motion was nullified, by the new First Amended Complaint, (herein, after, FAC). (L.F. 295-307, 308-314, 315, 316-320, 321, 322-328) While, attorney, Tobben, tried to say," the judge dismissed amended petition." (Tobben brief, p. #16) And says, " the motion to dismiss was properly before the court." (Tobben brief, p.p. #16-17), which is a manufactured, LIE, and Mr. Tobben knew it, but was hoping, that the " pro se," did not know it. NOTWITHSTANDING, the judge should have granted the FAC, M.R.C.P. 55.33, and there were NO answers filed at the time of the filing of the hearing, on July 10,2008. Appellees had plenty of time to file pleadings to the FAC., but they chose to stick to the original complaint, and try to change the rules, on their own, in the court of the error, that the FAC was, indeed, granted, by two judges, previously, and that the error must be corrected in light of the Motion 75.01, and the hearing on July 10, 2008. Please notice the transcript and the written record by the attorneys of that date, and see the distortion of the record compared to the transcript. The judge and the attorneys were up to " NO GOOD." And the attorneys forfeited, in default to address the FAC that was granted, at that time. We need this court to reverse the trail court's error, and abuse of discretion, of not reversing itself, upon the correct record, and granting of the FAC. (Appendice L, with, L.F. 55, 63-65, 204-234, 262-265, 282-283,287-290, 295-307, 308-314, 315, '316-320,' 321, 322-328, 329, 330-338, 339-342 343) A252.

112-115, 120-134), as to when and what appellees filed below. But, **what appellees did not file, was a response to the amended petition**. (L.F. 206-234). The amended petition was filed with " leave of court." (L.F. 55,63-65, 204-205, 206-234).

At NO time did appellants subject themselves to any waiver, but, stood their ground, against appellees' default in this matter. (L.F. 72-75, 78-90, 135-158, 164-166, 173-180, 186-189, 235-251)
(Appendice L, P.p. #A3-4).

"The Ventimiglia family apologizes to this court, but appellees have created such a smoke screen, causing one to wonder, how long it took appellees to come up with an argument that is %100 wrong, hoping the court will say, ' *this is just another one of those pro se cases*,' and not catch the blatant misrepresentations appellees have orchestrated in their briefs." Appellants followed the rules[2], and their facts are consistent with that;

What is also [2]consistent, is that appellees did

---

[2] Yes, it is true, that appellants did not notice the FAC had been granted by Judge Jamison, on 4/28/2008, and 4/30/2008, and then by Judge Kintz, on 5/9/2008, until, Mr. Ventimiglia was collecting certified files for a writ of Mandamus in this Court, for the illegalities being preformed in Div. 5. Notwithstanding, as soon as appellants discovered the granting of the FAC's, it was brought to the attention of the court and the attorneys. Yes, the discovery was after June 11, 2008, when the court dismissed appellant's case and refused to grant the FAC on June 11, 2008, but appellants did notify the attorneys and court.

[2] Terry Jones' brief is filled with evidence, in the form of pleadings, and appendices, (that are immune, and have been challenged in the lower court, and have not been decided, by that court, See; Appendix F), their briefs, also, are in violations of M.R.C.P. 55.27, 55.33, 81.17, 84.04, and 84.13 and Statutory Law, with 1st Amendment to U.S. Constitution, and therefore, his

not follow the rules. (A.B.,p.p.8-12) 10). Respondents never preserved the plain error, or properly pled plain error in their " points relied on," " arguments," or, " appendices," and abandoned any jurisdiction for this Court to hear their arguments. See, Motions to Dismiss Respondents' briefs, with Supplements.

C.O.G., INC., has not filed any jurisdictional statement in their brief, consequently, by violation of Rule 84.04, this court must dismiss their briefs, because this court has NO jurisdiction to entertain such writings, of C.O.G, Inc..

How can the lower courts take appellant's case, with over twenty (20), genuine issues of material facts, disputed, and dismiss with prejudice, without even as much as mentioning the outstanding evidence and record of appellants? See, M.R.C. P. 55.33. Also, the courts, and the attorneys, tried to destroy appellant's records, and tried such a psychological warfare to try to discourage, destroy, manipulate, appellants, and coverup, their outrageous, and egregious actions against appellants, in reframing, the issues, an facts, of appellants, by breaking any, and all of the M.R.C.P., to advance their unethical

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brief must be dismissed. This is a substantial error and it impedes the disposition of appellant's appeal. Please see; *Motions to Dismiss Appellees' Briefs, with Supplements.*

causes against appellants, and deny appellants due process, and equal protection of the laws, that are guaranteed to appellants, in the Missouri Constitution, as outlined herein. (L.F. 72-75, 78-90, 135-158, 164-166,173-180, 186-189, 190-193, 235-251, 262-265)

And then, appellees come into this Court of Appeals, and try to confuse the record[3] in such a way, making the average person declare ,"outrageous, and, criminal." (L.F. 1-356)(Appendices A-P)

POINTS RELIED UPON

I. WHETHER THE APPELLEES WERE IN LEGAL DEFAULT WHEN APPELLEES FAILED TO FILE A TIMELY RESPONSE TO THE APPELLANTS' GRANTED, FIRST AMENDED COMPLAINTS, THEREBY MAKING THE CIRCUIT JUDGES' JUDGMENT SUSTAINING MOOT MOTIONS TO DISMISS, NULL AND VOID, AND APPELLANTS' ORIGINAL COMPLAINT, NULLIFIED

Appellants add 11 additional authorities, and cases to this argument from brief #1

Appellants do Incorporate, into this Point I,

---

[3] Appellants make claims, and show clear rules, and laws, to where appellees' briefs, with the Points Relied Upon, and the Arguments are irrelevant to this appeal, and are in violation of M.R.C.P., and are subject to being totally dismissed on these errors, *but for*, making a legal responsive showing, that appellants' claims are relevant, legal, and binding, and appellants abandon nothing, appellants will address the relevant, arguments of appellees, herein, but hold this review in light of appellants' points, exclusively.

Point II, and Points I, II, III, IV From appellants' reply to C.O.G., INC.'S, response brief, and does restate the same into this Point I.

The trial court errored[4], and abused it's discretion, without jurisdiction
when the trail court did not order the appellees to file new motions to dismiss,
or make statements that would have corrected the manifest injustice to appellants, to have the order to dismiss with prejudice, reversed and reinstate the case, on the merits, according to M.R.C.P., at the hearing on July 10, 2008.

1. *Gering v. Walcot,* 975 S.W. 2d 496 (Mo. App. 1978);
2. *Burleson v. James Fleming & Enter. Leasing Co.*, 58 S.W. 3d 599
(Mo. App. W.D. 2001)
3. *State ex rel. Poucher v. Judge David Lee Vincent III*, 258 S.W. 3d 62,
(Mo. 2008);
4. M.R.C.P. 84.04(C), 84.13(5)(E), 81.17
5. *In re Marriage of Southard*, 733 S.W. 2d 867, 869 (Mo. App. 1987).
6. *Edwards v. Dwyers*; Lexis 11685; AND ALL

---

[4] Was judge Kintz responsible for the attorneys to default, by not responding properly, in the time allowed by the Rules, or were the attorneys responsible for their own negligence in not being honorable, and help, or lend, to the correcting of the manifest injustice to appellants by the court dismissing their case with prejudice? See: Missouri Supreme Ct. Rules 4-3.3.(a) - 4-3.7(a). According to the cases cited herein and the record, herein, the judge caused a manifest injustice to appellants, and with the help appellees, by not correcting the error of dismissal with prejudice, and allowing the case to continue according to M.R.C.P.

CASES CITED HEREIN.

7. *Missouri Supreme Court Rules*: Rule 4-3.3.(a) - Rule 4-3.7(a)

II. WHETHER THE FRAUD, AND PLAIN ERRORS OF ATTORNEYS AND JUDGES CAUSED IRREPARABLE DAMAGE TO APPELLANT'S CASE, CAUSING IT TO BE DISMISSED IN THE TRIAL COURT

Appellants do incorporate, and does restate the Point I, above, into this Point II, with Points, and Arguments from appellants' reply brief to C.O.G.INC'S Response Brief, I, II, III, and IV, and continues with;

The trial court caused [5]irreparable damage to appellants by allowing the attorneys to continue to fraud the court, appellants, State of Missouri, and the U.S. of America, by allowing the attorneys to distort, misrepresent, reframe appellants pleadings, to the point that it is criminal. (the attorneys are doing the same thing in this court, see, motions to dismiss) DENYING APPELLANTS 1ST AMENDMENT RIGHTS, PRIVILEGES, FREEDOMS, AND IMMUNITIES, UNDER THE COLOR OF LAW

1. *Hazel- Atlas Glass v. Hartford Empire*, 322 U.S. 252;

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[5] Appellants have literally, cried out, to this Court for help on more than one occasion, via, writs for Mandamus, and Requests for a Master to be Appointed, to hear the evidence that was totally disregarded in the lower courts, in an attempt to silence and discourage appellants to abandon their claims. But appellants are determined, in pursuing for justice, and for the minor children, involved. (L.F. 329, Appendix F. p.p. A 40-48)

2. 4 CONN. L. J. 586 (1997/1998);
3. Appendices, L- M, with, L.F. P.p.## 181-185, 199-200, 262-265, 269-275,
282-283, 285, 286, 295-307, 308-314, 316-320, 322-328, 343, with Appendix L, transcript of hearing on July 10, 2008), and M, Memorandum for Contempt of Court of Attorneys, (Watter's brief P.p. ## 8 - 55, Tobben's brief, P.p. ## 2 - 37);
4. 1ST Amendment to the U.S. Constitution.
5. *M.R.C.P. 84.04(C), 84.13(5)(E), 81.17.*
6. *Elrod v. Burns*, 427 U.S. 347, 373, 96, S.Ct. 2673, 49 L.ED.2d 547(1976);
7. *Iowa Right to Life Comm., Inc., v. Williams,* 187 F.3d 963, 970 (8th Cir. 1999);
8. Missouri Supreme Court Rule 4-3.3.(a) - Rule 4-3.7(a).

ARGUMENT

I. WHETHER THE APPELLEES WERE IN LEGAL DEFAULT WHEN APPELLEES FAILED TO FILE A TIMELY RESPONSE TO THE APPELLANTS' GRANTED, FIRST AMENDED COMPLAINTS, THEREBY MAKING THE CIRCUIT JUDGES' JUDGMENT SUSTAINING MOOT MOTIONS TO DISMISS, NULL AND VOID

STANDARD OF REVIEW:

Appellants adopt the standard of review from their brief. (p.p. 17-18);

Without further ado, the argument reply in Point I, is incorporated herein, and restated as well as that, Point I, from the first, appellant, brief. Defendants entered this default with open eyes, which is binding on their clients. See: *Gering v. Walcott,* 975 S.W. 2d 496 (Mo. App. W.D. 1998);

Burleson v. Jones Fleming & Enter. Leasing Co., 58 S.W. 3d 599 (Mo. App. W.D. 2001) Because default judgment is all that could be issued, the Court exceeds it's authority in dismissing appellants' case, and this Court must reverse the void order and judgment. *State ex rel Poucher* v. *Judge David Lee Vincent III*, 258 S.W. 3d 62 (Mo.banc 2008); and, Shepler v. Shepler, 348 S.W.2d 607, 609 (Mo. App. 1961); With all cases, cited in Point I, above.

II. FRAUD OF ATTORNEYS CAUSED MANIFEST INJUSTICE TO APPELLANTS IN THE LOWER COURTS, AND IN THIS COURT

STANDARD OF REVIEW;

Appellants do incorporate the complete record, herein, this Appeal, to show the extent the appellees and their clients will go to win a case. At anyone, and everyone's expense.

The trial court was clearly erroneous when it allowed the misconduct of the attorneys to continue, and then, the court joined into the misconduct, too, it seems, to take some sort of revenge, out on the pro se litigants, the Ventimiglia family. The court denied appellants meaningful access to the court in Missouri for proper redress of a malicious prosecution, that Mr. Ventimiglia, undoubtedly prevailed in. (L.F. 252 - 260). This Court must reverse the judgment and order of Division 5, in dismissing appellants' case with prejudice, and reinstate the case, with instructions as this court determines, according to the claims, facts, allegations, evidence, laws, and pleadings, herein this appeal.

FRAUD ON BOTH COURTS CITED

Federal Law Suit; Attorney Tobben, with his

client, Mr. Jones, visited a fraud on this Court, by citing the case of *Ventimiglia v. St. Louis County*, 2008, U.S. District, Lexis_____, (E.D.Mo. 2008); and 2009 Lexis _____,
(E.D. Mo. 2009)(Tobben brief, P.p.## 11, 32, 40).

First of all, that case is on appeal to the 8th Circuit, *Ventimiglia v. St. Louis County, et al.*, #09-1222,(C.APP. 8 2009); And secondly, that order was handed down in direct violation of *Deakins v. Monogham*, 108 S.Ct. 523(1980); And, thirdly, and most severely, the total inconsistent theories from Court to Court, creating a streak of frauds on the Court. See: *Hazel- Atlas Glass v. Hartford Empire*, 322 U.S. 252; with, over 150 cases cited on fraud in, *4 CONN. L. J.* 589 (1997/1998), P.p. ## 1 - 120; the Federal Court refused to exercise, either federal, or state jurisdiction because of the pending appeal. This was appellees' argument in the federal court; " that there was an appeal, and the court could not hear the issues." And the Court followed their arguments. Now, by [5]fraud, the attorneys, try to change colors in this court, saying just the opposite. The attorneys argue fraudulently, and this type of behavior is an

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[5] The attorneys play, " hot, and, cold," playing with very serious issues that are directly involved with people's lives, causing damages to appellants, by being careless, fast and loose, and reckless, and the attorneys can loose their licenses; And they should be brought before the Bar, and this court can order them to be brought before the Bar Association, for their misconduct. Also, Terry Jones and his attorneys have purposely, misquoted judge Perry's order and memorandum of appellants federal case, J.A. p.14-15, to prejudice appellant, and have also misquoted Rule 55.27, with 84.12, and 84.04 to show clear contempt for this court.

insult to the integrity of both Courts.
Also, Mr. Tobben and Terry Jones, falsely write in their pleadings, " that Terry Jones was never at the church where the incident happened, and he can't be sued for IIED." The record of appellants, is, and has been perfectly clear; (L.F. 223-226)

Pastor Cutshall, after a mediation meeting, confessed to Mr. Ventimiglia, that Mr. Jones, " just put the stuff in the affidavit." The pastor confessed to four people after the meeting that Terry Jones was, literally, the main instigator of the illegal venture against Mr. Ventimiglia. Terry Jones has never refuted this accusation, and neither has pastor Cutshall, or any of the other people that were at the meeting, to date. See, **Appendix B**, *Motion for Judgment of the Pleading, filed March 9, 2007, in Division 18.*

Mr. Tobben, and Mr. Jones, very well, better withdraw their inference or, insinuations that the federal court did something, it did not do. Judge Catherine C. Perry, made it perfectly clear, " the Court lacked jurisdiction to hear Ventimiglia's claims," that these attorneys claim judge Perry extended jurisdiction over them and decided they failed to state a claim, as attorneys claim. This is a "bold faced lie." (Jones Appendix A9).(Jones' brief, P.p. ## 35-36). Mr. Ventimiglia filed counterclaim attempts, motions for evidentiary hearings, two mandamus' in this court, a Removal to Federal Court, but only to be denied any justice in proving the false claims of appellees in Div. 18, against Mr. Ventimiglia. Never, has any court ruled on the issues and facts of appellant's claims against the appellees. This has been a complete Denial of Equal Protection, and Procedural Due Process of Law, and Denial of any

Fundamental Fairness to Appellants, violating Mo. Const. Art. I, Sect. 14, 1st Amend. To U.S. Constitution. See, **Exhibits A-G**, in the Motions to Dismiss, Respondent Mr. Jones, very cleverly, tried to exit the failed venture by voluntarily dismissing the suit and judge Bresnahan saw through the scam and ruled in " favor," of Mr. Ventimiglia, and against the appellees, and granted Mr. Ventimiglia costs for his " prevailing "over the appellees, in Div. 18, on Nov. 30, 2007, with a declaratory judgment, in **FAVOR** of Mr. Ventimiglia, and **AGAINST**, appellees. (L.F. P.p. 252-260). **Exhibit's A-G**, in Motions to Dismiss Respondent's Briefs. Appellees have never challenged Judge Bresnahan's Judgment and Order of Nov. 30, 2008, and it is final. (L.F. 258-259). Judge Bresnahan granted relief to Mr. Ventimiglia, and made appellees pay Mr. Ventimiglia money for their loss, and abandoning their case. R.S.Mo. 511.030(1);With 511.020, judge Bresnahan declared, Mr. Ventimiglia **RIGHT**, ***with payment***, and appellees **WRONG**, ***without payment***, but to make payment to the winner. See, also; Appellant/ Plaintiff's Memorandum for Contempt of Court on Attorneys for respondents; Appendix H. P.p. #2, and 11,12, par #6

DID, IN FACT, TRWC ABANDON IT'S CLAIMS AGAINST APPELLANT, MR. VENTIMIGLIA, CONTRARY TO APPELLEES' CLAIMS

Respondents did abandon[5] their claims in the petition

---

[5] 1. Through two discoveries, Mr. Jones could not produce any evidence, or witnesses to substantiate respondents' claims in Norman McFall's bogus affidavit; 2. The evidence introduced into the court was proven to be manufactured and edited; 3. Mr. Jones testified to hearsay, and the court allowed it to

go on for a pproximately one year, with respondents never producing one witness through the many hearings;4. Pastor Cutshall admitted that Terry Jones, attorney for respondents, " just put the Stuff into the affidavit." meaning, the facts needed to induce the trial court to establish probable cause for the injunction; (Appendices B-G, herein, and Motions to Dismiss Respondents Briefs and Exhibit's A-G, therein)5. When it was time for trial, the clever attorney, withdrew the case.

6. The judge granted favor to Mr. Ventimiglia with costs;

7. And granted partial Declaratory Judgment to Mr. Ventimiglia, and clearly stated it in the order and judgment of Nov. 30, 2007. (L.F. P.p. #253-260)8. Mr. Ventimiglia opposed, vehemently, any agreements with respondents and demanded a jury trail to prove Mr. Ventimiglia's innocence. 9. Mr. Ventimiglia filed for another counterclaim in opposition to respondents' Motion to Withdraw their suit against him, and petitioned the court of Appeals, through to the, Missouri Supreme Court.10. Mr. Ventimiglia rejected the invalid proposal by respondents to not enter the property of TRWC, or contact, or communicate with people listed in the affidavit. Furthermore, Mr. Ventimiglia has been on the property, more than once, and communicates with staff, and others at TRWC, regularly, and TRWC has not refiled any Injunctions.11.

Mr. Ventimiglia threatened respondents repeatedly through Division 18, that he was going to pursue remedies for malicious prosecution for respondents actions against him. See, **Motion to Withdraw Appeal, (L.F. P.p. #161-162)**; With this warning many months before respondents dismissed their claims, they knew Mr. Ventimiglia did not agree to their terms. There can be NO DOUBT that respondents abandoned their claims, in light of the threat of future prosecution, as stated by Mr. Ventimiglia, many times, to the respondents.

before the court, in division 18, because; THEY HAD NO EVIDENCE OR CREDIBLE WITNESSES. Holding in the appropriate light, *Teefy v. Cleaves,* 73 S.W.3d 813, 817 (Mo. App. W.D. 2002), according to respondent Jones' own brief, (¶¶ 9,20, 21,23,24) declares Mr.Ventimiglia," the prevailing party." ((L.F. 258-259). Judge's Orders and Judgment). **Misrepresentations by attorneys, what an answer, and responsive pleading are, or are not.**

Mr. Jones uses only misrepresented Rules 55.27(a)(6), trying to convince this that respondent's Motions to Dismiss, are answers to the complaint. This is fraud, and this court knows this. Please see, Rule 55.25(c);Also see, Rule 55.27(a)(6)..." Also, see, Rule 55.33(a). *See: Edwards v. Dwyer , Lexis 11685*

A motion making any of these defenses shall be made within the time allowed for responding to the opposing party's pleading, or, if no responsive pleading is permitted, within thirty days after the service of the last pleading. Motions and pleadings may be filed simultaneously without waiver of the matters contained in either." *Id. (underlining added)* .

Mr. Jones, made another [6]false statement in his brief, (Jones' brief, p.#3), when he extracted a single

---

[6] Mr. Jones, deliberately, left out the following sentence, " Plaintiffs amended the Intentional Infliction...to include, Negligent Infliction... Plaintiffs also amended the prayer and damages as requested by defendants." *Id.* Appellants added another cause of action, more damages, declaratory judgment, was still pending, that the judge never addressed. The attorneys added it to the order of July 10, 2008, in the judges closed chambers after the hearing, while appellants were being held prisoner by the security and the bailiff. Appendices, L, M, and, (L.F. 204, 343)

sentence from a paragraph in appellants, " Request Leave to file First Amended Complaint," and is using it in bad faith, and in a false light, saying, "As admitted by Ventimiglia in his Request for Leave of Court to File First Amended Petition, his First Amended Petition contains the same " facts, allegations, evidence, and records" as alleged in the initial Petition.(L.F. 204)"

JUDGE KINTZ' ORDER GRANTING APPELLANT'S FIRST AMENDED COMPLAINT IS AUTHENTIC, BINDING, AND PROPERLY PRESERVED

1. See: (L.F. 55, 56-57, 63-65, 66-67, 68-69, 91-94, 204-205, 206-234),and, (Appendix L, transcript of July 10, 2008);

APPELLEES' CASE WAS RIPE FOR DECISION, AS WAS APPELLANTS' CASE WAS RIPER, FOR THE CORRECT DECISION

1. See: Proposed Orders of plaintiffs / appellants from Division 10. (L.F. 173-180, 186-189, 190-193,196-198) This includes the proposed orders against C.O.G, INC.s' outrageous position that the appellees [7]Norman McFall, T. Bryan Cutshall, and Aaron Buck were not served properly. Miss Sue Wicks, executive secretary, committed perjury, again. (L.F. 186-189)

PLAINTIFFS' / APPELLANTS' FIRST AMENDED COMPLAINT WAS AMENDED WITH

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[7] These three appellees have abandoned their appeal, via their attorneys' failures. Because, they were served properly and they are appellees in this suit, and have not responded. They have abandoned their appeal, via, their attorneys. This court must rule accordingly. M.R.C.P. 84.04, 84.13, 81.17.

RELEVANT ISSUES TO SUPPORT THE GRANTING OF THE FIRST AMENDED PETITION

1. See; (L.F. 204-205) "Plaintiffs claim, nothing has been changed. The facts, allegations, evidence, and records are all the same. Plaintiffs amended the Intentional Infliction...to include, another cause of action, Negligent Infliction of Emotional Distress; Plaintiffs also amended the prayer and damages as requested by defendants."

2. Defendants / appellees did request a more definite statement in their motion's to dismiss. Now they turn from, " hot," to "cold," when appellees argue against the granting of the FAC. The Amendment should have been given freely, and it [8]was. (L.F. 55, 63-65, 204-245), M.R.C.P. 55.33. And the original complaint was nullified. See: *Barnett v. Zion Park District, and, Texas Eastern Transmission Corp. v. McCrate.*171 Ill. 2d 378, 384, 665 N.E.2d 808, 811 (1996).

3. Appellees had ample time to respond properly, but they did not, consequently, defaulting

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[8] THEN, it seems, the judge turns from "hot," to, "cold." One minute both judges grant the first amended complaints, and then the next, judge Kintz denies the FAC to be granted, on June 11, 2008, (L.F. 286), and then, on July 10, 2008, judge Kintz dismisses the FAC, that he granted on May 9, 2008, that he denied leave, on June 11, 208, and then judge Kintz dismissed the FAC, with the whole case with prejudice, with no explainable reasons. Why the court is so " topsy turvy," and the attorneys are allowed to corrupt the court system so egregiously. But nothing superseded the judges' first orders to grant the FAC, on 4/29/2008, 4/30/2008, and 5/9/2008, and appellees failed to respond to either FAC, and both complaints were relevant and had valid causes of actions. (L.F. 204-234).

themselves, and their clients. See: Point I, herein.

4. Assuming arguendo, that the FAC, was not granted, it should have been granted, with the new claim, damages, issues, facts, allegations, and prayer, and over twenty, disputed, genuine issues of material facts, in accordance with *Rule 55.33, Pure Country*, and *Edwards v. Dwyer.*, Edwards v. Dwyer, with case and laws, cited in Point I.

5. All of plaintiff's issues were properly presented, and preserved in their F.A.C. (L.F. 1-356, with all Appendices, and Exhibits)

APPELLANTS' ISSUES, FACTS, AND CLAIMS WERE NEVER ARGUED WITH ANY PROCEDURAL PROCESS, OR RECORDED PROPERLY IN THE ORDERS, CAUSING MANIFEST INJUSTICE TO APPELLANTS.

The trial Court erred by not ruling on the [9]merits, facts, issues, theories,
or any substance of appellants' law suit. Appellants, and their business, have been damaged by appellees,

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[9] Appellants could not split their causes of actions, there was nothing decided in their case, the judge abandoned appellants' case when he refused to hear any, procedurally correct, arguments and he did not give any facts, findings, conclusions on any issues, with appropriate laws, but rather allowed the attorneys to write anything they chose to write in the orders, and as one can easily guess, by now, the case was dismissed with prejudice, against appellants' protesting about, continuous violations of appellants Civil Rights and abuse of the attorneys and the judges. And the record supports these allegations, facts, and theories, above. (L.F. Appendice, L, M, N, P, and L.F. 170, 171, 173-180, 181-185, 186-189, 190-193, 196-198, 199-200, 285, 286, 343); Therefore, *Williams v. Rape, Shores..., Bagsby..., and Burke...*, cannot apply, contrary to Miss Moore's brief, P.p. 50-54. See; *Allen v. Costa*, " no fair hearings allowed."

and the behavior of appellees, and the trial court, have totally denied appellants " Meaningful Access to the Missouri Court," for proper redress in their litigation, in the entire case, represented in this underlying appeal. Appellees, have been done, " a great manifest injustice," in the lower courts, as the record demonstrates, herein, and this court must reverse the judgment of Judge Kintz, Division 5, of the St. Louis County Circuit Court, and, with instructions, send this case back the trial court for further legal remedies, as this court sees fit, within the scope of law and equity.

Haines v. Kerner; 92 S.Ct. 594 (1972);
Edwards v. Dwyer; LEXIS 1685 2007;
Scher v. Gilpin, 738 S.W. 2d 900, 901, 902 (Mo.App. W.D.);
Stevanovic v. City of Chicago, 896 N.E.2d 355, 385 Ill.App.3d 630, 324 Ill.Dec. 569 (Ill.App. Dist.1 09/30/2008);
Rule 84.04, 84.13, 81.17;
Thede v. Kapsas, 897 N.E.2d 345, 325 Ill.Dec. 97 (Ill.App. Dist.3 10/21/2008)

TSP-Hope, Inc. v. Home Innovators of Illinois, LLC, 890 N.E.2d
1220, 382 Ill.App.3d 1171, 322 Ill.Dec. 301 (Ill.App. Dist.4 06/26/2008

With all cases cited in Point I.
1. See, also: [0]Appencices, A-H;

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[010] These are, mainly, motions raising the claim of the denials of procedural due process, and other Constitutional violations, to

2. See the [11]transcript of July 10, 2008; (Appendice L).

CONCLUSION

Wherefore, Appellants pray that the Court reverse the judgments of the lower court for any and all other reasons stated, herein this petition, and appeal.

Respectfully submitted,

/S/ Vincent Ventimiglia
Vincent Ventimiglia
5817 Runnymede Place
Imperial, MO. 63052

/s/ Debbie Ventimiglia
Debbie Ventimiglia
5817 Runnymede Place
Imperial, MO. 63052

/s/ Vincent Ventimiglia,

---

appellants, from the state actors, under the color of law, who are appellees in this appeal. The occurrences that happened in Div. 18, in 2006-2007. The behavioral deficits of the appellees has not diminished.

[11] Appellants were not allowed to present their case, then the judge and the attorneys wrote a bogus order declaring he did. That is an example of how the court and the attorneys treat the pro se litigants. The records show clearly that there have been no facts, issues, or conclusions of laws supported in any of the judges orders, as was requested by appellants more than once. See appellants' Proposed orders. (L.F. 173-180, 186-189, 190-193). And Motion to Strike the Orders of May 2, 2008. (L.F. 181-185).

For minor children,
N.V., and, J.V.
5817 Runnymede Place
Imperial, MO. 63052

CERTIFICATE OF SERVICE, AND
CERTIFICATE OF COMPLIANCE WITH
RULE 84.06

I certify that this brief complies with Missouri Supreme Court Rules; That it contains 3159 words of proportional spacing and determined by Microsoft Word Perfect processing system used, and has size 12, and 14 font size, for letters, with Arial and Times New Roman letters; And the disk submitted herein, has been scanned for viruses, in accordance to Rule 84.06(g), and is virus free.

I further certify that a true copy of this brief, with disk, has been sent, via, first class U.S. Mail, postage prepaid, this 4th day of March, 2009, to the following attorneys for the Appellees:

Daniel Tobben
150 N. Meramec
Suite 450
Clayton, MO.
63105, and;

Jennine Adamek Moore
1010 Market St.
20th floor
St. Louis, MO.
63101.

/s/ Vincent Ventimiglia
Vincent Ventimiglia
5817 Runnymede Place
Imperial, MO. 63052

that Plaintiff has altered from the DVD in trying to cover up their most horrible attack on Defendant.

10. Therefore Defendant prays that this Court dismiss this case with prejudice, dismiss Terry Jones, or in the alternate, order Jones to correct the Response for Discovery, or quash Discovery because of lack of Certification, or order Plaintiff to hand over all of the documents, with a proper affidavit in certifying the correctness of the modified, edited, and altered DVD evidence.(**please note the deceptive ways that Terry Jones is acting and sanction him, or reprimand him, or correct his unethical behavior, once and for all).**

Respectfully submitted,

/S/ Vincent Ventimiglia
Minister Vincent Ventimiglia
5817 Runnymede Place
Imperial, MO. 63052
314-780-2256
636-287-1487
Applsubcong@sbcglobal.net

Certificate of Service

Comes now defendant and does certify; that a true copy of this Motion was sent to Terry Jones at 13321 N. Outer 40 Rd.. 63017 first class mail, postage prepaid this 9th day of March, 2007.

/s/ Vincent Ventimiglia
Vincent Ventimiglia

September 26 , 2006

Dear Mr. Jones ,

Please find a response to the motions you filed against, per T.R.W.C., with exhibits . As you can see the motions are frivolous and there is a serious problem with our fine Christian friends telling the truth. It seems like Pharisees and attorneys have a lot in common . But never the less , I am a forgiving man .

I will give the plaintiff's a chance to withdraw their petitions and apologize openly in the church to my son and myself . After I get a written invitation , of course . The pastor is very clever , he can come with the perfect speech of reconciliation , etc . I would also appreciate if they clean up the trash they did to me in the prisons. And any other thing the Lord leads them to do in a reconciliation gesture that would please Him .

You see Mr. Jones , I have a number of friends who are witnesses to the whole thing . My son is suffering from the trauma as well as myself .I have lost one customer already from the incident and there are other problems developing .

I haven't talked to any newspapers yet , or attorneys , but I am confident that this would be big news . Could you imagine an article like this in the Star , Enquirer , or one of those international Hollywood newspapers that go nation wide in the isles of the grocery stores ?

Could you see the headlines ? Pastor calls man wolf and devil in front of five hundred in his

congregation! Or,Charlatan over steps his authority! Or , child suffers from mental stress over pastors inflaming accusations to His father in front of five hundred . Or ... who knows . Maybe , WHO REALLY IS THE DEVIL , INNOCENT MAN ,OR PASTOR ? I bet the media would have a field day .

My friend , we have a pretty secure civil matter in front of us . Read all of the record in front of you . All I was doing was trying to find a friend in one of your super star pastors . Maybe some comfort , or some love , or some guidance , or some fellowship , or ... we can go on forever .

It might go over criminal for Norman McFall ? How would the COG, Pastor B and Norman like to be sued over this ? No threats , just discussing Possibilities of the future . I have plenty of witnesses and evidence .

I will give you all one week before I file my response with the court .

Yours truly,

Vince Ventimiglia

IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY STATE OF MISSOURI

FILED NOV. 14, 2007
DENIED NOV. 30, 2007

ST. LOUIS COG, Inc. D/B/A TWIN RIVERS WORSHIP CENTER, a not-for-profit organization,	)	
PLAINTIFF,	)	
-vs.-	)	Cause No. 06CC-003797
VINCENT VENTIMIGLIA,	)	Division 18
DEFENDANT.	)	

DEFENDANT'S REQUEST LEAVE TO FILE COUNTERCLAIM; DEFENDANT'S AMENDED, OMITTED COUNTERCLAIM AGAINST PLAINTIFFS; DEMAND FOR JURY TRIAL; AND REQUEST TO JOIN T. BRYAN CUTSHALL AND NORMAN MCFALL AS PARTIES TO THIS CASE

Comes now, Defendant, Minister Vincent Ventimiglia, and would file this Counterclaim against Plaintiff's According to R.C.P.Mo.55.32(e); and, Defendant would ask leave of this court to file

this Counterclaim, for these reasons, to wit;

1. Defendant is requesting this court grant leave to defendant to file a counterclaim according to R.C.P.Mo. 55.32(e), or other reasons, as the court sees fit to do in this situation between plaintiff and defendant by allowing defendant to file his Counterclaim.

Justice would not be served in the event that this counterclaim would not be allowed because it has and would continue to cause undue hardship upon defendant if this remedy was not afforded to him for the malicious acts against him by plaintiff, T. Bryan Cutshall, and Norman McFall. [sic] (e) *Omitted Counterclaim. When a pleader fails to set up a Counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the counterclaim may be set up by amendment by leave of court.*

2. Defendant has filed a Motion for this court to grant leave to file this amended petition and would add this Counterclaim:

A. That plaintiff has filed with this court an affidavit by Norman McFall that is bogus and filled with lies causing ***Malicious Actions, Harassment, and Hostility*** against Defendant. Defendant incorporates all of the Motions, Judgment on the Pleading, Summary Judgment 74.04, Memorandum, and Affidavit, Motion for Sanctions, and all other Motions filed by defendant, into this pleading.

B. Defendant has filed with this court a supplemental response, in the form of a counterclaim according to Rule 55.32 (d) [sic] *Counterclaim Maturing or Acquired after the Pleading. A claim that either matured or was acquired by the pleader after*

serving the pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading. (this was done within the twenty days allowed after service of pleading, or response); also defendant has filed, previously, a Motion for Leave to file a Counterclaim, and counterclaim, and this court denied the requests.
(The court denied the Motions because judge Bresnahan said the malicious prosecution was premature at that time). And the time is ripe at this hour.

C. Defendant also asked that T. Bryan Cutshall and Norman McFall to be enjoined to this Counterclaim, as well as a demand for jury trial in this case. All in accordance of law set forth in the motion.

3. Defendant asked for documents, through the discovery procedure in this court, that could prove Plaintiff's claims against him in the affidavit filed by Terry Jones and Norman McFall, that was used to falsely procure the court into jurisdiction and probable cause in issuing restraint against defendant Ventimiglia. Plaintiff's claim there is no evidence and did not, and could not, produce any evidence in support of their claims against Defendant, when partial discovery was finally pried out of their attorney, Terry Jones. By admitting there was NO evidence in support of the affidavit used by plaintiff, the admission would show that the plaintiff, McFall, and Cutshall used deceit and lies to manipulate this tribunal. In violation of Supreme Court Rule 4-3.3(a) and other rules.

4. Defendant has hired an expert witness to analyze the DVD of the September 17, 2006 service where defendant was attacked by the pastor, T. Bryan

Cutshall. See Exhibit B. This is an affidavit by Mr. Nick Frolos, analysis expert.
Mr. Frolos' conclusion is," that the DVD, in question has definitely been tampered with." Showing unclean hands, once again, by our plaintiff, and company.

5. Defendant has filed numerous Motions complaining about the content of the allegations and has had no relief from this court in the matter. Now, since Terry Jones has admitted to this court that there is no evidence, and since COG, Inc., Cutshall, and Norman McFall has Maliciously Prosecuted, causing Damages, and Emotional Distress, among other Damages and Tort violations such as Breach of Confidence, Invasion of Privacy. And the Vicarious Liability holds COG Inc., responsible for the "underlings" actions in this case.

6. Defendant would ask for relief from plaintiff in the form of damages and costs, in order to compensate for damages arising out of legal expenses, expert witness, and costs, from negligence acts, causing mental stress to defendant in the amount of thirty five thousand dollars ($34,250.00). See: List of Costs, Exhibit A.

7. Because of the Malicious Actions, etc., Defendant has accrued costs in the form of legal assistance, subpoenas, an expert witness, time, and damages; these costs, and damages need to be satisfied by Plaintiff, T. Bryan Cutshall, and Norman McFall for the unwarranted Malicious Acts, etc. against defendant; in the amount of ($34,250.00).

8. There is also claims by T. Bryan Cutshall, and defendant, that Terry Jones, attorney for plaintiff, made up the affidavit and the evidence seems to support that claim as well, and there has been NO denying the accusation by plaintiff. (see

Motion for Sanctions against Terry Jones, Summary Judgment, Judgment on the Pleading, etc.) This court has been negligent in addressing the complaints by defendant and must take action and allow this counterclaim to go forward. This court must supply this remedy at this time. This court has jurisdiction according to R.C.P.Mo. 75.01 to act in response to defendant's request.(the court dismissed on Oct. 17th, 2007)

9. Defendant demands a jury trial in accordance with R.C.P.Mo. 69.01 and 92.02 (a)(2) and other laws, in accordance.

10. Plaintiff's "illusions and deceit" were made to show through pre trial remedies, and plaintiff's are lacking any merit, or credible facts, therefore admitting to Maliciously Prosecuted defendant causing damages to defendant and family of two sons and a wife.

And finally, defendant has prevailed against plaintiff and company in forcing them to dismiss their case against Mr. Ventimiglia. THIS CLEARLY SHOWS THE MALICIOUS SCHEME AGAINST DEFENDANT BY PLAINTIFF, TO THIS COURT. 11.

Defendant would also ask this court to " join " T. Bryan Cutshall and Norman McFall as parties to this case for the reasons set out in this petition and for reasons of equity and all fairness as the law provides. Rule 52.04 (a) [sic] *A person shall be joined in the action if: (1) in the person's absence complete relief cannot be accorded among those already parties...If the person has not been joined, the court shall order the person be made a party. COG, INC., MCFALL, AND CUTSHALL HAVE BEEN AN ACTIVE PART OF THE SCHEME BY ENTERING FALSE DOCUMENTS INTO THIS COURT AS*

EVIDENCE AND SUBJECTING THIS COURT TO THEIR SCHEMES.

12. THEREFORE, plaintiff prays that this court grant leave for defendant to file counterclaim, request for jury trial, and join T. Bryan Cutshall and Norman McFall to this case, according to all fairness, and equity as this court sees fit and the law allows.

My commission expires: Respectfully submitted,

_____ /S/ Vincent Ventimiglia
Vincent Ventimiglia
/S/ NOTARY PUBLIC 5817 Runnymede pl.
Notary Public Imperial, MO. 63052
314-780-2256
636-287-1487
vincentventimiglia@yahoo.com

Seal:

Certificate of Service

Comes now Defendant, Minister Vincent Ventimiglia, and does certify; that a true copy of this counter claim and demand for jury trial has been sent to Terry Jones at 13321 North Outer Forty Rd., Suite 700, St. Louis, MO. 63017, this14th day of November, 2007, by first class mail, postage prepaid.

/s/ Vincent Ventimiglia
Vincent Ventimiglia

IN THE CIRCUIT COURT OF THE COUNTY
OF ST. LOUIS STATE OF MISSOURI

ST. LOUIS COG, INC.	)	
D/B/A TWIN RIVERS	)	
WORSHIP CENTER,	)	
a Missouri not-for-profit corporation,	)	
	)	
Plaintiff,	)	
	)	
-vs.	)	Cause No.
	)	06CC-00
	)	3797GCV
	)	
VINCENT VENTIMIGLIA,	)	
	)	
Defendant.	)	

AFFIDAVIT OF NICK FROLOS

COMES NOW, Nick Frolos, and states upon information and belief, under oath, as follows:

1. I am the owner of Media Images, Inc., located at 1756 Chase Drive, St. Louis, Missouri 63026.

2. I have approximately fifteen (15) years experience in the audio/visual industry, I perform audio /visual depositions and mock trials for Litigation Insights. Approximately 15% of my business involves editing audio/ visual recordings.

3. My services were recently retained by Mr. Ventimiglia to examine a DVD of a Christian service, recorded on September 17, 2006, at the Twin Rivers Worship Center, and to make a professional determination as to whether the DVD had been edited or altered.

4. I advised Mr. Ventimiglia at the outset of our meeting not to tell me anything about the DVD where he believed it to be altered, as I did not want my opinion to be influenced by Mr. Ventimiglia's opinion.

5. I examined the DVD multiple times using a Horita - Time Code Generator. After extensive viewing the DVD and closely listening to the audio portion, it is my reasonable professional opinion that the DVD has either be edited or altered beginning at time sequence code 49:09:07. **Where a minister begins to personally launch a verbal attack against Mr. Ventimiglia.**

6. My professional opinion is based primarily on the fact that as the camera scans the congregation, during the verbal exchange between the minister and Mr. Ventimiglia, there is absolutely no facial changes within the congregation, no one is looking to see where the incident is taking place, no one expresses surprise, and the crowd's eyes are still fixed on the minister as if he was still in preaching mode. This leads me to believe that the DVD has been altered and edited from its original form.

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

I, Nick Frolos, being first duly sworn, on oath deposes and states that I have caused to be prepared and have read the foregoing, and that the statements made therein are true and correct, to my best information, knowledge, and belief.

s/ Nick Frolos
Nick Frolos

./s/ Peggy Sampson
Notary Public

Subscribed and sworn to before me on May 17, 2007
My Commission Expires 2/22/2001
A244.

IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT

VINCENT VENTIMIGLIA, DEBBIE VENTIMIGLIA, N.V., a minor, and, J.V., a minor, Appellants, -vs.- ST. LOUIS, C.O.G., INC., d/b/a TWIN RIVERS WORSHIP CENTER, T. BRYAN CUTSHALL, NORMAN MCFALL, TERRY JONES, AARON BUCK, Appellees/ Respondents	)	No. ED91597 Circuit Court No. 08SL-CC- 00790

APPEAL FROM THE CIRCUIT COURT OF SAINT LOUIS COUNTY, MISSOURI, HONORABLE JUDGE JAMISON, JUDGE KINTZ, JUDGE WHITTINGTON, JUDGE VINCENT III

APPELLANT'S REPLY BRIEF TO TERRY JONES' RESPONSE BRIEF

Vincent Ventimiglia,
For himself, and minors,
N.V., and, J.V.
5817 Runnymede Place
Imperial, MO. 63052

Debbie Ventimiglia, pro se
5817 Runnymede Place
Imperial, MO. 63052

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Appendices

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ii. ***Appendix B, Motion for Judgment of the Pleading, filed March 9, 2007, in Division 18***..A15-21

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JURISDICTIONAL STATEMENT

Appellants restate what has been said in their original brief as to this Court's Jurisdiction, and does restate the same, herein. (Appellant's Brief, p. # 7)

STATEMENT OF FACTS

Appellants Vincent Ventimiglia, Debbie Ventimiglia, and their two minor sons, N.V, and, J.V., restate the Statement of Facts from their original brief and incorporate the same herein.
(appellant's brief, p.p. 8-10). Appellants would not, normally, according to M.R.C.P.84.04(g), repeat, or have to repeat, the arguments of their first brief, if, appellees did not try to totally confuse this Court with their briefs. Appellants have added substan-tially more cases and laws, in support of each of their Points, that will quench the false, arguments in the briefs of appellees . (Jones brief, P.p. #15, 30) (Watters brief, 48,49)

However, the facts stated by Russell F. Waters, Jennine Adamek Moore, Kenneth R. Goleaner, brief, (p.p. 8-14), and those facts stated by Daniel Tobben, Laura Gerdes Long, in the Dana McKitrick brief, (p.p. 2-8), Distort the facts of this case, and set in motion major attempts to confuse the docket entries, of the events below; (L.F. 135-158, 173-180, 181-185, 186-189, 190-193,235-251, 252-260, 262-265, 295-307, 308-314, 315-3280; (Appendices, A-P).

A) **Appellees were timely served with this multi-faced law suit;** (appellant's brief, p. #8);(herein after, addressed as A.B.)

B) **Appellees filed Motions to Dismiss;** (A.B. p. #8);

C) **Appellants, by leave, filed an Amended Complaint;** (A.B. p. #8);

D) **Appellees never filed any Response to the Amended Petition of appellants;** (A.B., p.#8); (*bearing in mind, pro se pleadings cannot be dismissed unless the court can declare beyond a reasonable doubt that the pro se, can prove no set of facts under any theory of law*) (A.B. , p.p. #15, 20) (L.F. 321, p.#4,

par. #11, declaring forfeiture of appellees, and, Appendice L, trans. p.#A3, lines, ##2-22, [16]default against attorneys).

E) **Appellant's First Amended Complaint, was relevant, and the Court should have granted it, and did;** Appellees attorneys have committed fraud in this Court and the lower courts, about the issues, involved, herein; (L.F. p. 15-21)

In addition to relying on the straight forward facts of the legal file (L.F. P.p. 45-48, 95-107, 108-111,

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[16] WITHOUT QUESTION, when the judge issued the judgment for appellees, (L.F. 284-286), it did so, by reviving, dead, mooted out, motions to dismiss, on such motions, collectively, or individually, and appellants protested. Notwithstanding, appellants' Original Motion was nullified, by the new First Amended Complaint, (herein, after, FAC). (L.F. 295-307, 308-314, 315, 316-320, 321, 322-328) While, attorney, Tobben, tried to say," the judge dismissed amended petition." (Tobben brief, p. #16) And says, " the motion to dismiss was properly before the court." (Tobben brief, p.p. #16-17), which is a manufactured, LIE, and Mr. Tobben knew it, but was hoping, that the " pro se," did not know it. NOTWITHSTANDING, the judge should have granted the FAC, M.R.C.P. 55.33, and there were NO answers filed at the time of the filing of the hearing, on July 10,2008. Appellees had plenty of time to file pleadings to the FAC., but they chose to stick to the original complaint, and try to change the rules, on their own, in the court of the error, that the FAC was, indeed, granted, by two judges, previously, and that the error must be corrected in light of the Motion 75.01, and the hearing on July 10, 2008. Please notice the transcript and the written record by the attorneys of that date, and see the distortion of the record compared to the transcript. The judge and the attorneys were up to " NO GOOD." And the attorneys forfeited, in default to address the FAC that was granted, at that time. We need this court to reverse the trail court's error, and abuse of discretion, of not reversing itself, upon the correct record, and granting of the FAC. (Appendice L, with, L.F. 55, 63-65, 204-234, 262-265, 282-283,287-290, 295-307, 308-314, 315, '316-320,' 321, 322-328, 329, 330-338, 339-342 343)

112-115, 120-134), as to when and what appellees filed below. But, **what appellees did not file, was a response to the amended petition**. (L.F. 206-234). The amended petition was filed with " leave of court." (L.F. 55,63-65, 204-205, 206-234).

At NO time did appellants subject themselves to any waiver, but, stood their ground, against appellees' default in this matter. (L.F. 72-75, 78-90, 135-158, 164-166, 173-180, 186-189, 235-251)
(Appendice L, P.p. #A3-4).

"The Ventimiglia family apologizes to this court, but appellees have created such a smoke screen, causing one to wonder, how long it took appellees to come up with an argument that is %100 wrong, hoping the court will say, ' *this is just another one of those pro se cases,*' and not catch the blatant misrepresentations appellees have orchestrated in their briefs." Appellants followed the rules[2], and their facts are consistent with that;

What is also [2]consistent, is that appellees did

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[2] Yes, it is true, that appellants did not notice the FAC had been granted by Judge Jamison, on 4/28/2008, and 4/30/2008, and then by Judge Kintz, on 5/9/2008, until, Mr. Ventimiglia was collecting certified files for a writ of Mandamus in this Court, for the illegalities being preformed in Div. 5. Notwithstanding, as soon as appellants discovered the granting of the FAC's, it was brought to the attention of the court and the attorneys. Yes, the discovery was after June 11, 2008, when the court dismissed appellant's case and refused to grant the FAC on June 11, 2008, but appellants did notify the attorneys and court.

[2] Terry Jones' brief is filled with evidence, in the form of pleadings, and appendices, (that are immune, and have been challenged in the lower court, and have not been decided, by that court, See; Appendix F), their briefs, also, are in violations of M.R.C.P. 55.27, 55.33, 81.17, 84.04, and 84.13 and Statutory Law, with 1st Amendment to U.S. Constitution, and therefore, his

not follow the rules. (A.B.,p.p.8-12) 10). Respondents never preserved the plain error, or properly pled plain error in their " points relied on," " arguments," or, " appendices," and abandoned any jurisdiction for this Court to hear their arguments. See, Motions to Dismiss Respondents' briefs, with Supplements.

C.O.G., INC., has not filed any jurisdictional statement in their brief, consequently, by violation of Rule 84.04, this court must dismiss their briefs, because this court has NO jurisdiction to entertain such writings, of C.O.G, Inc..

How can the lower courts take appellant's case, with over twenty (20), genuine issues of material facts, disputed, and dismiss with prejudice, without even as much as mentioning the outstanding evidence and record of appellants? See, M.R.C. P. 55.33. Also, the courts, and the attorneys, tried to destroy appellant's records, and tried such a psychological warfare to try to discourage, destroy, manipulate, appellants, and coverup, their outrageous, and egregious actions against appellants, in reframing, the issues, an facts, of appellants, by breaking any, and all of the M.R.C.P., to advance their unethical

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brief must be dismissed. This is a substantial error and it impedes the disposition of appellant's appeal. Please see; *Motions to Dismiss Appellees' Briefs, with Supplements.*

causes against appellants, and deny appellants due process, and equal protection of the laws, that are guaranteed to appellants, in the Missouri Constitution, as outlined herein. (L.F. 72-75, 78-90, 135-158, 164-166,173-180, 186-189, 190-193, 235-251, 262-265)

And then, appellees come into this Court of Appeals, and try to confuse the record[3] in such a way, making the average person declare ,"outrageous, and, criminal." (L.F. 1-356)(Appendices A-P)

POINTS RELIED UPON

I. WHETHER THE APPELLEES WERE IN LEGAL DEFAULT WHEN APPELLEES FAILED TO FILE A TIMELY RESPONSE TO THE APPELLANTS' GRANTED, FIRST AMENDED COMPLAINTS, THEREBY MAKING THE CIRCUIT JUDGES' JUDGMENT SUSTAINING MOOT MOTIONS TO DISMISS, NULL AND VOID, AND APPELLANTS' ORIGINAL COMPLAINT, NULLIFIED

Appellants add 11 additional authorities, and cases to this argument from brief #1

Appellants do Incorporate, into this Point I,

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[3] Appellants make claims, and show clear rules, and laws, to where appellees' briefs, with the Points Relied Upon, and the Arguments are irrelevant to this appeal, and are in violation of M.R.C.P., and are subject to being totally dismissed on these errors, *but for*, making a legal responsive showing, that appellants' claims are relevant, legal, and binding, and appellants abandon nothing, appellants will address the relevant, arguments of appellees, herein, but hold this review in light of appellants' points, exclusively.

Point II, and Points I, II, III, IV From appellants' reply to C.O.G., INC.'S, response brief, and does restate the same into this Point I.

The trial court errored[4], and abused it's discretion, without jurisdiction
when the trail court did not order the appellees to file new motions to dismiss,
or make statements that would have corrected the manifest injustice to appellants, to have the order to dismiss with prejudice, reversed and reinstate the case, on the merits, according to M.R.C.P., at the hearing on July 10, 2008.

1. *Gering v. Walcot,* 975 S.W. 2d 496 (Mo. App. 1978);
2. *Burleson v. James Fleming & Enter. Leasing Co.*, 58 S.W. 3d 599
   (Mo. App. W.D. 2001)
3. *State ex rel. Poucher v. Judge David Lee Vincent III*, 258 S.W. 3d 62,
   (Mo. 2008);
4. M.R.C.P. 84.04(C), 84.13(5)(E), 81.17
5. *In re Marriage of Southard*, 733 S.W. 2d 867, 869 (Mo. App. 1987).
6. *Edwards v. Dwyers*; Lexis 11685; AND ALL

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[4] Was judge Kintz responsible for the attorneys to default, by not responding properly, in the time allowed by the Rules, or were the attorneys responsible for their own negligence in not being honorable, and help, or lend, to the correcting of the manifest injustice to appellants by the court dismissing their case with prejudice? See: Missouri Supreme Ct. Rules 4-3.3.(a) - 4-3.7(a). According to the cases cited herein and the record, herein, the judge caused a manifest injustice to appellants, and with the help appellees, by not correcting the error of dismissal with prejudice, and allowing the case to continue according to M.R.C.P.

CASES CITED HEREIN.

7. *Missouri Supreme Court Rules*: Rule 4-3.3.(a) - Rule 4-3.7(a)

II. WHETHER THE FRAUD, AND PLAIN ERRORS OF ATTORNEYS AND JUDGES CAUSED IRREPARABLE DAMAGE TO APPELLANT'S CASE, CAUSING IT TO BE DISMISSED IN THE TRIAL COURT

Appellants do incorporate, and does restate the Point I, above, into this Point II, with Points, and Arguments from appellants' reply brief to C.O.G.INC'S Response Brief, I, II, III, and IV, and continues with;

The trial court caused [5]irreparable damage to appellants by allowing the attorneys to continue to fraud the court, appellants, State of Missouri, and the U.S. of America, by allowing the attorneys to distort, misrepresent, reframe appellants pleadings, to the point that it is criminal. (the attorneys are doing the same thing in this court, see, motions to dismiss) DENYING APPELLANTS 1ST AMENDMENT RIGHTS, PRIVILEGES, FREEDOMS, AND IMMUNITIES, UNDER THE COLOR OF LAW

1. *Hazel- Atlas Glass v. Hartford Empire,* 322 U.S. 252;

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[5] Appellants have literally, cried out, to this Court for help on more than one occasion, via, writs for Mandamus, and Requests for a Master to be Appointed, to hear the evidence that was totally disregarded in the lower courts, in an attempt to silence and discourage appellants to abandon their claims. But appellants are determined, in pursuing for justice, and for the minor children, involved. (L.F. 329, Appendix F. p.p. A 40-48)

2. 4 CONN. L. J. 586 (1997/1998);
3. Appendices, L- M, with, L.F. P.p.## 181-185, 199-200, 262-265, 269-275,
282-283, 285, 286, 295-307, 308-314, 316-320, 322-328, 343, with Appendix L, transcript of hearing on July 10, 2008), and M, Memorandum for Contempt of Court of Attorneys, (Watter's brief P.p. ## 8 - 55, Tobben's brief, P.p. ## 2 - 37);
4. 1ST Amendment to the U.S. Constitution.
5. *M.R.C.P. 84.04(C), 84.13(5)(E), 81.17.*
6. *Elrod v. Burns*, 427 U.S. 347, 373, 96, S.Ct. 2673, 49 L.ED.2d 547(1976);
7. *Iowa Right to Life Comm., Inc., v. Williams,* 187 F.3d 963, 970 (8th Cir. 1999);
8. Missouri Supreme Court Rule 4-3.3.(a) - Rule 4-3.7(a).

ARGUMENT

I. WHETHER THE APPELLEES WERE IN LEGAL DEFAULT WHEN APPELLEES FAILED TO FILE A TIMELY RESPONSE TO THE APPELLANTS' GRANTED, FIRST AMENDED COMPLAINTS, THEREBY MAKING THE CIRCUIT JUDGES' JUDGMENT SUSTAINING MOOT MOTIONS TO DISMISS, NULL AND VOID

STANDARD OF REVIEW:

Appellants adopt the standard of review from their brief. (p.p. 17-18);

Without further ado, the argument reply in Point I, is incorporated herein, and restated as well as that, Point I, from the first, appellant, brief. Defendants entered this default with open eyes, which is binding on their clients. See: *Gering v. Walcott,* 975 S.W. 2d 496 (Mo. App. W.D. 1998);

Burleson v. Jones Fleming & Enter. Leasing Co., 58 S.W. 3d 599 (Mo. App. W.D. 2001) Because default judgment is all that could be issued, the Court exceeds it's authority in dismissing appellants' case, and this Court must reverse the void order and judgment. *State ex rel Poucher* v. *Judge David Lee Vincent III,* 258 S.W. 3d 62 (Mo.banc 2008); and, Shepler v. Shepler, 348 S.W.2d 607, 609 (Mo. App. 1961); With all cases, cited in Point I, above.

II. FRAUD OF ATTORNEYS CAUSED MANIFEST INJUSTICE TO APPELLANTS IN THE LOWER COURTS, AND IN THIS COURT

STANDARD OF REVIEW;

Appellants do incorporate the complete record, herein, this Appeal, to show the extent the appellees and their clients will go to win a case. At anyone, and everyone's expense.

The trial court was clearly erroneous when it allowed the misconduct of the attorneys to continue, and then, the court joined into the misconduct, too, it seems, to take some sort of revenge, out on the pro se litigants, the Ventimiglia family. The court denied appellants meaningful access to the court in Missouri for proper redress of a malicious prosecution, that Mr. Ventimiglia, undoubtedly prevailed in. (L.F. 252 - 260). This Court must reverse the judgment and order of Division 5, in dismissing appellants' case with prejudice, and reinstate the case, with instructions as this court determines, according to the claims, facts, allegations, evidence, laws, and pleadings, herein this appeal.

FRAUD ON BOTH COURTS CITED

Federal Law Suit; Attorney Tobben, with his

client, Mr. Jones, visited a fraud on this Court, by citing the case of *Ventimiglia v. St. Louis County*, 2008, U.S. District, Lexis_____, (E.D.Mo. 2008); and 2009 Lexis _____,
(E.D. Mo. 2009)(Tobben brief, P.p.## 11, 32, 40).

First of all, that case is on appeal to the 8th Circuit, *Ventimiglia v. St. Louis County, et al.*, #09-1222,(C.APP. 8 2009); And secondly, that order was handed down in direct violation of *Deakins v. Monogham*, 108 S.Ct. 523(1980); And, thirdly, and most severely, the total inconsistent theories from Court to Court, creating a streak of frauds on the Court. See: *Hazel- Atlas Glass v. Hartford Empire*, 322 U.S. 252; with, over 150 cases cited on fraud in, *4 CONN. L. J.* 589 (1997/1998), P.p. ## 1 - 120; the Federal Court refused to exercise, either federal, or state jurisdiction because of the pending appeal. This was appellees' argument in the federal court; " that there was an appeal, and the court could not hear the issues." And the Court followed their arguments. Now, by [5]fraud, the attorneys, try to change colors in this court, saying just the opposite. The attorneys argue fraudulently, and this type of behavior is an

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[5] The attorneys play, " hot, and, cold," playing with very serious issues that are directly involved with people's lives, causing damages to appellants, by being careless, fast and loose, and reckless, and the attorneys can loose their licenses; And they should be brought before the Bar, and this court can order them to be brought before the Bar Association, for their misconduct. Also, Terry Jones and his attorneys have purposely, misquoted judge Perry's order and memorandum of appellants federal case, J.A. p.14-15, to prejudice appellant, and have also misquoted Rule 55.27, with 84.12, and 84.04 to show clear contempt for this court.

insult to the integrity of both Courts.
Also, Mr. Tobben and Terry Jones, falsely write in their pleadings, " that Terry Jones was never at the church where the incident happened, and he can't be sued for IIED." The record of appellants, is, and has been perfectly clear; (L.F. 223-226)

Pastor Cutshall, after a mediation meeting, confessed to Mr. Ventimiglia, that Mr. Jones, " just put the stuff in the affidavit." The pastor confessed to four people after the meeting that Terry Jones was, literally, the main instigator of the illegal venture against Mr. Ventimiglia. Terry Jones has never refuted this accusation, and neither has pastor Cutshall, or any of the other people that were at the meeting, to date. See, **Appendix B**, *Motion for Judgment of the Pleading, filed March 9, 2007, in Division 18.*

Mr. Tobben, and Mr. Jones, very well, better withdraw their inference or, insinuations that the federal court did something, it did not do. Judge Catherine C. Perry, made it perfectly clear, " the Court lacked jurisdiction to hear Ventimiglia's claims," that these attorneys claim judge Perry extended jurisdiction over them and decided they failed to state a claim, as attorneys claim. This is a "bold faced lie." (Jones Appendix A9).(Jones' brief, P.p. ## 35-36). Mr. Ventimiglia filed counterclaim attempts, motions for evidentiary hearings, two mandamus' in this court, a Removal to Federal Court, but only to be denied any justice in proving the false claims of appellees in Div. 18, against Mr. Ventimiglia. Never, has any court ruled on the issues and facts of appellant's claims against the appellees. This has been a complete Denial of Equal Protection, and Procedural Due Process of Law, and Denial of any

Fundamental Fairness to Appellants, violating Mo. Const. Art. I, Sect. 14, 1st Amend. To U.S. Constitution. See, **Exhibits A-G**, in the Motions to Dismiss, Respondent Mr. Jones, very cleverly, tried to exit the failed venture by voluntarily dismissing the suit and judge Bresnahan saw through the scam and ruled in " favor," of Mr. Ventimiglia, and against the appellees, and granted Mr. Ventimiglia costs for his " prevailing "over the appellees, in Div. 18, on Nov. 30, 2007, with a declaratory judgment, in **FAVOR** of Mr. Ventimiglia, and **AGAINST**, appellees. (L.F. P.p. 252-260). **Exhibit's A-G**, in Motions to Dismiss Respondent's Briefs. Appellees have never challenged Judge Bresnahan's Judgment and Order of Nov. 30, 2008, and it is final. (L.F. 258-259). Judge Bresnahan granted relief to Mr. Ventimiglia, and made appellees pay Mr. Ventimiglia money for their loss, and abandoning their case. R.S.Mo. 511.030(1);With 511.020, judge Bresnahan declared, Mr. Ventimiglia **RIGHT**, ***with payment***, and appellees **WRONG**, ***without payment***, but to make payment to the winner. See, also; Appellant/ Plaintiff's Memorandum for Contempt of Court on Attorneys for respondents; Appendix H. P.p. #2, and 11,12, par #6

DID, IN FACT, TRWC ABANDON IT'S CLAIMS AGAINST APPELLANT, MR. VENTIMIGLIA, CONTRARY TO APPELLEES' CLAIMS

Respondents did abandon[5] their claims in the petition

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[5] 1. Through two discoveries, Mr. Jones could not produce any evidence, or witnesses to substantiate respondents' claims in Norman McFall's bogus affidavit; 2. The evidence introduced into the court was proven to be manufactured and edited; 3. Mr. Jones testified to hearsay, and the court allowed it to

go on for a pproximately one year, with respondents never producing one witness through the many hearings;4. Pastor Cutshall admitted that Terry Jones, attorney for respondents, " just put the Stuff into the affidavit." meaning, the facts needed to induce the trial court to establish probable cause for the injunction; (Appendices B-G, herein, and Motions to Dismiss Respondents Briefs and Exhibit's A-G, therein)5. When it was time for trial, the clever attorney, withdrew the case.

6. The judge granted favor to Mr. Ventimiglia with costs;

7. And granted partial Declaratory Judgment to Mr. Ventimiglia, and clearly stated it in the order and judgment of Nov. 30, 2007. (L.F. P.p. #253-260)8. Mr. Ventimiglia opposed, vehemently, any agreements with respondents and demanded a jury trail to prove Mr. Ventimiglia's innocence. 9. Mr. Ventimiglia filed for another counterclaim in opposition to respondents' Motion to Withdraw their suit against him, and petitioned the court of Appeals, through to the, Missouri Supreme Court.10. Mr. Ventimiglia rejected the invalid proposal by respondents to not enter the property of TRWC, or contact, or communicate with people listed in the affidavit. Furthermore, Mr. Ventimiglia has been on the property, more than once, and communicates with staff, and others at TRWC, regularly, and TRWC has not refiled any Injunctions.11.

Mr. Ventimiglia threatened respondents repeatedly through Division 18, that he was going to pursue remedies for malicious prosecution for respondents actions against him. See, **Motion to Withdraw Appeal, (L.F. P.p. #161-162)**; With this warning many months before respondents dismissed their claims, they knew Mr. Ventimiglia did not agree to their terms. There can be NO DOUBT that respondents abandoned their claims, in light of the threat of future prosecution, as stated by Mr. Ventimiglia, many times, to the respondents.

before the court, in division 18, because; THEY HAD NO EVIDENCE OR CREDIBLE WITNESSES. Holding in the appropriate light, *Teefy v. Cleaves,* 73 S.W.3d 813, 817 (Mo. App. W.D. 2002), according to respondent Jones' own brief, (¶¶ 9,20, 21,23,24) declares Mr.Ventimiglia," the prevailing party." ((L.F. 258-259). Judge's Orders and Judgment). **Misrepresentations by attorneys, what an answer, and responsive pleading are, or are not.**

Mr. Jones uses only misrepresented Rules 55.27(a)(6), trying to convince this that respondent's Motions to Dismiss, are answers to the complaint. This is fraud, and this court knows this. Please see, Rule 55.25(c);Also see, Rule 55.27(a)(6)..." Also, see, Rule 55.33(a). *See: Edwards v. Dwyer , Lexis 11685*

A motion making any of these defenses shall be made within the time allowed for responding to the opposing party's pleading, or, if no responsive pleading is permitted, within thirty days after the service of the last pleading. Motions and pleadings may be filed simultaneously without waiver of the matters contained in either." *Id. (underlining added)* .

Mr. Jones, made another [6]false statement in his brief, (Jones' brief, p.#3), when he extracted a single

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[6] Mr. Jones, deliberately, left out the following sentence, " Plaintiffs amended the Intentional Infliction...to include, Negligent Infliction... Plaintiffs also amended the prayer and damages as requested by defendants." *Id.* Appellants added another cause of action, more damages, declaratory judgment, was still pending, that the judge never addressed. The attorneys added it to the order of July 10, 2008, in the judges closed chambers after the hearing, while appellants were being held prisoner by the security and the bailiff. Appendices, L, M, and, (L.F. 204, 343)

sentence from a paragraph in appellants, " Request Leave to file First Amended Complaint," and is using it in bad faith, and in a false light, saying, "As admitted by Ventimiglia in his Request for Leave of Court to File First Amended Petition, his First Amended Petition contains the same " facts, allegations, evidence, and records" as alleged in the initial Petition.(L.F. 204)"

JUDGE KINTZ' ORDER GRANTING APPELLANT'S FIRST AMENDED COMPLAINT IS AUTHENTIC, BINDING, AND PROPERLY PRESERVED

1. See: (L.F. 55, 56-57, 63-65, 66-67, 68-69, 91-94, 204-205, 206-234),and, (Appendix L, transcript of July 10, 2008);

APPELLEES' CASE WAS RIPE FOR DECISION, AS WAS APPELLANTS' CASE WAS RIPER, FOR THE CORRECT DECISION

1. See: Proposed Orders of plaintiffs / appellants from Division 10. (L.F. 173-180, 186-189, 190-193,196-198) This includes the proposed orders against C.O.G, INC.s' outrageous position that the appellees [7]Normar McFall, T. Bryan Cutshall, and Aaron Buck were not served properly. Miss Sue Wicks, executive secretary, committed perjury, again. (L.F. 186-189)

PLAINTIFFS' / APPELLANTS' FIRST AMENDED COMPLAINT WAS AMENDED WITH

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[7] These three appellees have abandoned their appeal, via their attorneys' failures. Because, they were served properly and they are appellees in this suit, and have not responded. They have abandoned their appeal, via, their attorneys. This court must rule accordingly. M.R.C.P. 84.04, 84.13, 81.17.

RELEVANT ISSUES TO SUPPORT THE GRANTING OF THE FIRST AMENDED PETITION

1. See; (L.F. 204-205) "Plaintiffs claim, nothing has been changed. The facts, allegations, evidence, and records are all the same. Plaintiffs amended the Intentional Infliction...to include, another cause of action, Negligent Infliction of Emotional Distress; Plaintiffs also amended the prayer and damages as requested by defendants."

2. Defendants / appellees did request a more definite statement in their motion's to dismiss. Now they turn from, " hot," to "cold," when appellees argue against the granting of the FAC. The Amendment should have been given freely, and it [8]was. (L.F. 55, 63-65, 204-245), M.R.C.P. 55.33. And the original complaint was nullified. See: *Barnett v. Zion Park District, and, Texas Eastern Transmission Corp. v. McCrate.*171 Ill. 2d 378, 384, 665 N.E.2d 808, 811 (1996).

3. Appellees had ample time to respond properly, but they did not, consequently, defaulting

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[8] THEN, it seems, the judge turns from "hot," to, "cold." One minute both judges grant the first amended complaints, and then the next, judge Kintz denies the FAC to be granted, on June 11, 2008, (L.F. 286), and then, on July 10, 2008, judge Kintz dismisses the FAC, that he granted on May 9, 2008, that he denied leave, on June 11, 208, and then judge Kintz dismissed the FAC, with the whole case with prejudice, with no explainable reasons. Why the court is so " topsy turvy," and the attorneys are allowed to corrupt the court system so egregiously. But nothing superseded the judges' first orders to grant the FAC, on 4/29/2008, 4/30/2008, and 5/9/2008, and appellees failed to respond to either FAC, and both complaints were relevant and had valid causes of actions. (L.F. 204-234).

themselves, and their clients. See: Point I, herein.

4. Assuming arguendo, that the FAC, was not granted, it should have been granted, with the new claim, damages, issues, facts, allegations, and prayer, and over twenty, disputed, genuine issues of material facts, in accordance with *Rule 55.33, Pure Country*, and *Edwards v. Dwyer.*, Edwards v. Dwyer, with case and laws, cited in Point I.

5. All of plaintiff's issues were properly presented, and preserved in their F.A.C. (L.F. 1-356, with all Appendices, and Exhibits)

APPELLANTS' ISSUES, FACTS, AND CLAIMS WERE NEVER ARGUED WITH ANY PROCEDURAL PROCESS, OR RECORDED PROPERLY IN THE ORDERS, CAUSING MANIFEST INJUSTICE TO APPELLANTS.

The trial Court erred by not ruling on the [9]merits, facts, issues, theories,
or any substance of appellants' law suit. Appellants, and their business, have been damaged by appellees,

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[9] Appellants could not split their causes of actions, there was nothing decided in their case, the judge abandoned appellants' case when he refused to hear any, procedurally correct, arguments and he did not give any facts, findings, conclusions on any issues, with appropriate laws, but rather allowed the attorneys to write anything they chose to write in the orders, and as one can easily guess, by now, the case was dismissed with prejudice, against appellants' protesting about, continuous violations of appellants Civil Rights and abuse of the attorneys and the judges. And the record supports these allegations, facts, and theories, above. (L.F. Appendice, L, M, N, P, and L.F. 170, 171, 173-180, 181-185, 186-189, 190-193, 196-198, 199-200, 285, 286, 343); Therefore, *Williams v. Rape, Shores..., Bagsby..., and Burke...*, cannot apply, contrary to Miss Moore's brief, P.p. 50-54. See; *Allen v. Costa*, " no fair hearings allowed."

and the behavior of appellees, and the trial court, have totally denied appellants " Meaningful Access to the Missouri Court," for proper redress in their litigation, in the entire case, represented in this underlying appeal. Appellees, have been done, " a great manifest injustice," in the lower courts, as the record demonstrates, herein, and this court must reverse the judgment of Judge Kintz, Division 5, of the St. Louis County Circuit Court, and, with instructions, send this case back the trial court for further legal remedies, as this court sees fit, within the scope of law and equity.

Haines v. Kerner; 92 S.Ct. 594 (1972);
Edwards v. Dwyer; LEXIS 1685 2007;
Scher v. Gilpin, 738 S.W. 2d 900, 901, 902 (Mo.App. W.D.);
Stevanovic v. City of Chicago, 896 N.E.2d 355, 385 Ill.App.3d 630, 324 Ill.Dec. 569 (Ill.App. Dist.1 09/30/2008);
Rule 84.04, 84.13, 81.17;
Thede v. Kapsas, 897 N.E.2d 345, 325 Ill.Dec. 97 (Ill.App. Dist.3 10/21/2008)

TSP-Hope, Inc. v. Home Innovators of Illinois, LLC, 890 N.E.2d
1220, 382 Ill.App.3d 1171, 322 Ill.Dec. 301 (Ill.App. Dist.4 06/26/2008

With all cases cited in Point I.
1. See, also: [0]Appencices, A-H;

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[010] These are, mainly, motions raising the claim of the denials of procedural due process, and other Constitutional violations, to

2. See the [11]transcript of July 10, 2008; (Appendice L).

CONCLUSION

Wherefore, Appellants pray that the Court reverse the judgments of the lower court for any and all other reasons stated, herein this petition, and appeal.

Respectfully submitted,

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/s/ Vincent Ventimiglia,

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appellants, from the state actors, under the color of law, who are appellees in this appeal. The occurrences that happened in Div. 18, in 2006-2007. The behavioral deficits of the appellees has not diminished.

[11] Appellants were not allowed to present their case, then the judge and the attorneys wrote a bogus order declaring he did. That is an example of how the court and the attorneys treat the pro se litigants. The records show clearly that there have been no facts, issues, or conclusions of laws supported in any of the judges orders, as was requested by appellants more than once. See appellants' Proposed orders. (L.F. 173-180, 186-189, 190-193). And Motion to Strike the Orders of May 2, 2008. (L.F. 181-185).

For minor children,
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CERTIFICATE OF SERVICE, AND
CERTIFICATE OF COMPLIANCE WITH
RULE 84.06

I certify that this brief complies with Missouri Supreme Court Rules; That it contains 3159 words of proportional spacing and determined by Microsoft Word Perfect processing system used, and has size 12, and 14 font size, for letters, with Arial and Times New Roman letters; And the disk submitted herein, has been scanned for viruses, in accordance to Rule 84.06(g), and is virus free.

I further certify that a true copy of this brief, with disk, has been sent, via, first class U.S. Mail, postage prepaid, this 4th day of March, 2009, to the following attorneys for the Appellees:

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